

**WSR 09-19-001**  
**PERMANENT RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-24—Filed September 2, 2009, 1:26 p.m., effective October 3, 2009]

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

Purpose: The rule requires parties to follow the civil rules of procedure for discovery for adjudicative hearings or contested administrative proceedings with the office of the insurance commissioner.

Citation of Existing Rules Affected by this Order: Amending WAC 284-02-070.

Statutory Authority for Adoption: RCW 48.02.060.

Other Authority: RCW 34.05.446(2).

Adopted under notice filed as WSR 09-14-101 on June 30, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 2, 2009.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-10, filed 7/2/08, effective 8/2/08)

**WAC 284-02-070 How does the OIC conduct hearings? (1) Generally.**

(a) Hearings of the OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). In addition to general hearings conducted pursuant to RCW 48.04.010, two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings or contested case hearings. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand or request a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Requests for hearings must be in writing and delivered to the Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

**(2) Proceedings for contested cases or adjudicative hearings.**

(a) Provisions specifically relating to disciplinary action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance agents, brokers, solicitors, and adjusters are contained in RCW 48.17.530; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against viatical settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer; or may use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commis-

sioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

(iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).

(v) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(d) Discovery is available in adjudicative proceedings and contested cases pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).

(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.

(ii) The presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW) and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site (www.insurance.wa.gov).

## WSR 09-19-002

### PERMANENT RULES

#### LIQUOR CONTROL BOARD

[Filed September 2, 2009, 1:54 p.m., effective October 3, 2009]

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

Purpose: As part of the liquor control board's on-going rules review process, chapter 314-637 WAC was reviewed for relevance, clarity, and accuracy. The adopted rules reflect current agency practices.

Citation of Existing Rules Affected by this Order: Amending WAC 314-37-010, 314-37-020, and 314-37-030.

Statutory Authority for Adoption: RCW 66.08.030, 66.08.050(2).

Adopted under notice filed as WSR 09-14-138 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 314-37-010 was amended to clarify tribal liquor stores instead of tribal contract liquor stores. WAC 314-37-030 was amended to clarify "PCI" procedures by spelling out "payment card industry."

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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: September 2, 2009.

Ruthann Kurose  
Board Member

### Chapter 314-37 WAC

#### NONSTATE LIQUOR ((VENDORS)) STORES

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-37-010 Liquor sales in Indian country—Appointment of tribal liquor ((venders)) stores—Qualifications.** (1) The Washington state liquor control board deems it necessary and advisable to adopt this rule for the following reasons:

(a) The decision of the United States Supreme Court in the case of *Rice v. Rehner* (filed July 1, 1983) has established that the state of Washington has licensing jurisdiction over tribal liquor sales in Indian country and that those sales, when made in conformity with federal law, are subject to both tribal and state liquor regulatory requirements.

(b) It is contrary to state law (see chapter 66.44 RCW) for purchasers of Indian liquor to remove that liquor from the reservation and into the state of Washington in those instances where the tribal liquor sellers are not authorized by the board to sell liquor.

(2) Accordingly, pursuant to RCW 66.08.050(2), the Washington state liquor control board will appoint qualifying Indian tribes, which have entered into negotiated business agreements with the board, as tribal liquor ((venders)) stores which will authorize those ((vender)) tribes to sell liquor by the bottle to such persons, firms or corporations as may be sold liquor from a state liquor store. All such appointments will be subject to the following conditions:

(a) The tribe must enter into a business agreement with the Washington state liquor control board for the purchase and sale of liquor which will insure that the state's control over liquor traffic will be maintained while taking into consideration the unique nature of a tribal liquor ((vender)) store operation.

(b) The tribe must purchase all of its spirituous liquor for resale in Indian country from the board at a negotiated price: Provided, That a quota of spirituous liquor will be sold by the board each year to the ((vender)) tribe without the payment of state taxes, which quota shall be negotiated between the board and the qualified tribes and approved by the department of revenue.

(c) The tribe must have in force a tribal ordinance governing liquor sales, which ordinance must have been certified by the Secretary of the Interior and published in the Federal Register as required by 18 U.S.C. §1161.

(d) The tribe must make all liquor sales in Indian country in conformity with both state and federal law.

(3) Should a tribe which has been appointed as a tribal liquor ((vender)) store pursuant to this section fail to comply with all the above enumerated conditions, which shall be construed as continuing requirements to maintain the status of tribal liquor ((vender)) store, the appointment of that tribe as a tribal liquor ((vender)) store may be revoked by the board.

(4) A tribe, whether or not it has status as ((an Indian)) a tribal liquor ((vender)) store, which desires to sell beer and wine purchased from a licensed distributor must obtain state licenses for the sale of beer and wine and must abide by all state laws and rules applicable to sale of beer and wine by state licensees. Tribes selling beer and wine shall collect and remit to the state department of revenue the retail sales tax imposed by RCW 82.08.020 on retail sales of beer and wine to nontribal members.

(5) "Indian country" as used herein shall have the meaning ascribed to it in Title 18 U.S.C. §1151 as qualified by Title 18 U.S.C. §1154 as of July 1, 1983.

AMENDATORY SECTION (Amending Order 180, Resolution No. 189, filed 3/13/86)

**WAC 314-37-020 Manufacturer's on-site ((vending)) liquor store appointment—Qualifications.** (1) Pursuant to RCW 66.08.050, the board, in its discretion, may appoint a domestic winery which also manufactures liquor products other than wine pursuant to a license under Title 66 RCW, as a ((vender)) manufacturer liquor store for the purpose of sale

of liquor products of its own manufacture on the licensed premises only.

(2) Such appointment may not be made to domestic wineries located inside incorporated cities or towns in which there is a state liquor store.

(3) Such appointment shall only be made after a contract has been entered into between the board and the domestic winery. Such contract shall contain the following:

(a) A designation of the location on the licensed premises from which the sales will be made;

(b) A designation of the nonwine products manufactured by the winery which will be sold under the appointment;

(c) That the manufacturer/((vender)) liquor store shall not be considered an employee of the state for any purpose;

(d) That the manufacturer/((vender)) liquor store shall agree to hold the state harmless from any and all claims resulting from operation of the manufacturer's on-site ((vend-ership)) liquor store; and

(e) Such other aspects of the appointment relationship as the parties may agree to.

(4) All sales made under a manufacturer's on-site ((vending)) liquor store appointment shall be made at the prices established by the board for sales of the same product through state liquor stores and agencies.

(5) All sales made under a manufacturer's on-site ((vending)) liquor store appointment shall be subject to all applicable state taxes.

AMENDATORY SECTION (Amending WSR 99-04-114, filed 2/3/99, effective 3/6/99)

**WAC 314-37-030 Bank credit cards and debit cards.**

(1) **May contract liquor ((venders)) stores accept bank credit cards and debit cards?** Yes. Per RCW 66.16.041, contract liquor ((venders)) stores may accept bank credit cards and debit cards for liquor purchases from nonlicensees. Any equipment provided by the board to ((an agency)) a contract liquor ((vender)) store may be used only for the sale of liquor obtained from the board.

(2) **What are the procedures for accepting bank credit cards and debit cards for liquor purchases?** The procedures for accepting bank credit cards and debit cards for liquor purchases are as follows:

(a) **Sales transactions.**

(i) All credit/debit card sales transactions will be made in accordance with liquor control board and ((SPS)) payment card industry (PCI) procedures.

(ii) Cash back is not allowed.

(iii) Batch closing must be done nightly in order to ensure transactions are processed in a timely manner.

(b) **Recording transactions.** Contract liquor ((venders)) stores will record transactions on forms provided by the liquor control board.

(c) **Reporting.** Contract liquor ((venders)) stores will report all credit/debit card sales to the administrative services division of the liquor control board.

**(d) Retention of records.**

(i) All credit/debit card receipts and balancing reports will be kept for the current fiscal year, in addition to the prior two complete fiscal years.

(ii) Contract liquor ((vendors)) stores are responsible for the security of all credit/debit card records.

**WSR 09-19-003****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed September 2, 2009, 4:48 p.m., effective October 3, 2009]

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

Purpose: New WAC 390-16-049 is designed to clarify when a political committee that is located out-of-state is required to file as an in-state committee under RCW 42.17.040 through 42.17.090.

Statutory Authority for Adoption: RCW 42.17.370(1).

Adopted under notice filed as WSR 09-14-020 on June 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: August 27, 2009.

Douglas J. Ellis  
Assistant Director

**NEW SECTION**

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

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

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

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

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

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

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

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

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

**WSR 09-19-004****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed September 2, 2009, 4:49 p.m., effective October 3, 2009]

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

Purpose: Amend WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees, to incorporate provisions of WAC 390-16-049 in the C-5 form and to make inflationary adjustments in compliance with RCW 42.17.093 (1)(g).

Citation of Existing Rules Affected by this Order: Amending WAC 390-16-050.

Statutory Authority for Adoption: RCW 42.17.370(1) and 42.17.093 (1)(g).

Adopted under notice filed as WSR 09-14-020 on June 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 1, Repealed 0.

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

Date Adopted: August 27, 2009.

Douglas J. Ellis  
Assistant Director

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

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

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Form <b>C5</b> 1/08	This space for office use P M O S T R K  R E C E I V E D
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**OUT OF STATE COMMITTEE CONTRIBUTIONS TO WASHINGTON CANDIDATES OR COMMITTEES**

<b>1. Name and address of committee making the contribution</b> Name _____ Street address _____ City / State / Zip _____	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
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3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)

4. Officers or responsible leaders of committee:

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

Candidate's name	Office sought	Political Party	Date	Amount given

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

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

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

Recipient's name and address	Purpose	Date	Amount given

Check here  if continued

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

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

Name and address	Date	Amount

Check here  if continued on an attached sheet

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

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

Check here  if continued on an attached sheet

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

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

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

Signature of Committee Official _____	Name – Typed or Printed _____
Title _____	Daytime Telephone No. (    ) _____
	E-Mail Address _____

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## **INSTRUCTIONS**

**(Statutory reference: RCW 42.17.093)**

### **WHO MUST REPORT**

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

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

### **WHEN TO REPORT**

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

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

### **SEND REPORT TO**

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

### **Questions?**

**Contract PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111**

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Form <b>C5</b> (11/09)	This space for office use P M O A S R T K  R E C E I V E D
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## Out-of-State Political Committee Campaign Finance Report

<b>1. Name and full address of committee making the contribution</b> Name _____ Street address _____ City / State / Zip _____	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
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**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

<b>4. Officers or responsible leaders of committee:</b> Name and full address _____	Title _____
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**5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:**

Name of state(s) & administrative agency(s) _____	Agency(s) website address _____
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**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate name	Office sought	Political party	Date	Amount

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

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

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

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

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

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

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

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

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

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

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

Check here  if continued on an attached sheet

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

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

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

Signature of Committee Official _____	Name – Typed or Printed _____
Title _____	Daytime Telephone No. (    ) _____
	E-Mail Address _____

**Instructions – (Statutory reference: RCW 42.17.093)**

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

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

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

**Questions? Contact PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111**

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

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

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

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

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

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

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

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

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

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

**WSR 09-19-006**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed September 3, 2009, 8:39 a.m., effective October 4, 2009]

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

Purpose: This rule-making order amends chapter 16-752 WAC, Noxious weed control by:

(1) Adding additional species to the wetland and aquatic weed quarantine (floating primrose-willow, variable-leaf milfoil, ricefield bulrush, and water soldier);

(2) Adding additional species to the noxious weed seed and plant quarantine (false brome, shiny geranium, and European hawkweed);

(3) Revising permit requirements for educational or training materials;

(4) Adding language regarding botanical synonyms; and

(5) Increasing its clarity and readability by removing obsolete definitions and updating the language.

Citation of Existing Rules Affected by this Order: Amending WAC 16-752-001, 16-752-300, 16-752-305, 16-752-310, 16-752-315, 16-752-320, 16-752-330, 16-752-400, 16-752-505, 16-752-515, and 16-752-610.

Statutory Authority for Adoption: Chapters 17.10, 17.24, and 34.05 RCW.

Adopted under notice filed as WSR 09-15-181 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 11, 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 11, Repealed 0.

Date Adopted: September 3, 2009.

Dan Newhouse  
 Director

AMENDATORY SECTION (Amending Order 2054, filed 9/20/90, effective 10/21/90)

**WAC 16-752-001 Definitions.** The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

~~((1) "Director" means the director of agriculture of this state, or a duly authorized representative.~~

~~(2) "Department" means the Washington state department of agriculture.~~

~~(3) "Person" means any individual, partnership, corporation, association, agency, or organized group of persons whether or not incorporated.~~

~~(4) "Hay" means the harvested herbage of forage plants, including but not limited to grasses, legumes, sedges and rushes.~~

~~(5) "State board" means the Washington state noxious weed control board.~~

~~(6) "Applicant" means a project sponsor.~~

~~(7) "BARS" means the budgeting, accounting, and reporting system of municipal fiscal management.~~

~~(8) "Environmental checklist" means the form in WAC 197-11-960.~~

~~(9) "Executive secretary" means the state noxious weed control board executive secretary.~~

~~(10) "Integrated pest management" means a decision-making process which combines all feasible control techniques into a program for managing targeted noxious weeds including but not limited to prevention, monitoring, consideration of alternative methods, and evaluation.~~

~~(11) "Local noxious weed control agency" means any activated county or regional noxious weed control board created under chapter 17.10 RCW, any weed district created under chapter 17.04 RCW, or any intercounty weed district created under chapter 17.06 RCW.~~

~~(12) "Monitoring" means inspecting to gather and record site specific information on which decisions about treatment choices are to be based.~~

~~(13) "Objectives" means statements of precise outcomes which can be measured to determine actual accomplishments.~~

~~(14) "Principal investigator" means the person under whose direction the noxious weed control project will be carried out such as the county weed control coordinator or county weed control board chairperson.~~

~~(15) "Project sponsor" means the county legislative authority of a county with an activated noxious weed control board, a local weed control agency, or a combination of two or more agencies acting through a lead agency, responsible for implementing an approved project.~~

~~(16) "Public benefits" means those services, goods, or other benefits, whether tangible or intangible, which accrue to persons other than those on whose property weed control measures pursuant to this chapter are undertaken.~~

~~(17) "Public costs" means those costs, whether tangible or intangible, which accrue to persons other than those on whose property weed control measures pursuant to this chapter are undertaken.~~

~~(18) "Significant environmental harm" means a reasonable likelihood of more than a moderate adverse impact on environmental quality as set forth in WAC 197-11-794.)~~

"Department" means the Washington state department of agriculture.

"Director" means the director of agriculture of this state, or a duly authorized representative.

"Hay" means the harvested herbage of forage plants, including but not limited to grasses, legumes, sedges and rushes.

**YELLOW NUTSEDGE QUARANTINE**

**AMENDATORY SECTION** (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

**WAC 16-752-300 Yellow nutsedge—Establishing quarantine.** Yellow nutsedge (*Cyperus esculentus* L.) is a herbaceous perennial that is one of the most serious noxious weeds of agronomic crops. It propagates by seed, rhizomes, bulbs, and nutlets. Soil containing nutlets is the primary mode of spread in cultivated land. It is highly invasive and its unchecked spread would entail great economic loss to the agricultural industries of the state. It is a class B noxious weed designated for control in Thurston County (WAC 16-750-011 ~~((33))~~ (49)(a)). Yellow nutsedge infests a plant nursery site at the Port of Olympia in Tumwater, Washington. Movement of material from this site initiates additional infestations. RCW 17.10.210 provides that either the director or the county noxious weed control board or a weed district may issue an order for quarantine and restriction or denial of access to land determined to be so seriously infested that control measures cannot be undertaken without quarantine of the land. The director has determined:

- (1) That the identified site is so seriously infested as to require quarantine; and
- (2) That the movement of contaminated materials from this site presents an immediate threat of infestation to the rest of the county agricultural and nonagricultural areas; and
- (3) That the restriction of such spread is critical to control efforts.

**AMENDATORY SECTION** (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

**WAC 16-752-305 Yellow nutsedge—Quarantine area.** The quarantine area shall encompass the Port of Olympia, located at the Olympia Airport, Tumwater, Washington, and more particularly described as follows:

County of Thurston, state of Washington:

Parcel number 12711230000 - a portion of this parcel containing twenty-two acres of nursery production, more or less and three access roads one of which begins at 85th Avenue SW, the other two begin at Old Highway 99 SW.

A tract of land in Section 11, Township 17 north, Range 2 west of the Willamette Meridian, more particularly described as follows:

A portion of the Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter, Section 11, Township 17 North, Range 2 West, W.N., Thurston County, Washington.

Beginning at the South Quarter corner of Section 11; thence north 01°53'09"E, along the center of the section line 77.6 feet to the southerly edge of the infestation, said point being 75 feet northerly of the center of taxiway 5 and the point of beginning; thence south 88°14'46"E parallel to and 75 feet northerly of taxiway 5, 1254.2 feet to coordinate pair N 604966 E 1043268 North American Datum 83/91, Washington State Lambert projection South Zone; thence north 01°32'43"E parallel to and 75 feet westerly of taxiway 5, 256.1 feet (N 605222 E 1043275); thence north 74°44'42"W,

parallel to and 200 feet southerly of runway 8-26, 2031.7 feet (N 605757 E 1041315); thence south 12°53'58"W, parallel to and 75 feet easterly of taxiway 4, 744.6 feet (N 605031 E 1041148); thence south 88°14'46"E parallel to and 75 feet northerly of taxiway 5, 866.5 feet to the point of beginning. TOGETHER WITH: Two (2) 50 foot easements for ingress and egress described as follows: Beginning at the centerline of Old Highway 99 at coordinate pair N 605688 E 1044159; thence south 62°13'04"W, 337 feet (N 605531 E 1043861); thence south 37°34'07"W, 66 feet (N 605479 E 1043821); thence south 15°34'51"W, 432 feet (N 605063 E 1043705); thence south 56°50'31"W, 90 feet (N 605014 E 1043630); thence north 73°42'21"W, 135 feet (N 605052 E 1043500); thence south 73°31'23"W, 47 feet (N 605031 E 1043429).

Beginning at the coordinate pair N 605479 E 1043821; thence north 10°18'17"W, 78 feet (N 605556 E 103807); thence north 52°23'38"W, 93 feet (N 605613 E 1043733); thence north 74°34'40"W, 331 feet (N 605701 E 1043414); thence north 24°31'11"W, 63 feet (N 605758 E 1043388); thence north 0°58'36"W, 352 feet (N 606110 E 1043382).

Beginning at the end of 85th Avenue SE; thence north 14°36'57"W, 44 feet; thence north 1°44'13"E, 103 feet; thence north 1°44'13"E, 122 feet; thence north 4°2'36"E, 103 feet; thence north 1°44'13"E, 140 feet; thence north 3°31'10"E, 134 feet; thence north 1°44'13"E, 146 feet; thence north 6°43'41"W, 141 feet; thence north 6°3'35"W, 92 feet; thence north 1°44'13"E, 128 feet; thence north 15°58'50"W, 96 feet; thence south 85°33'49"W, 113 feet; thence north 88°15'39"W, 100 feet; thence north 85°38'49"W, 133 feet; thence north 88°15'36"W, 137 feet; thence north 85°28'20"W, 125 feet; thence south 89°35'45"W, 162 feet; thence north 88°15'32"W, 129 feet; thence north 88°15'30"W, 200 feet; thence north 88°15'28"W, 150 feet; thence north 85°43'23"W, 137 feet; thence north 88°38'45"E, 113 feet; thence north 83°56'12"W, 242 feet; thence north 40°38'52"W, 25 feet; thence north 40°6'3"W, 25 feet.

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

**AMENDATORY SECTION** (Amending WSR 98-01-056, filed 12/11/97, effective 1/11/98)

**WAC 16-752-310 Yellow nutsedge—Articles whose movement is restricted.** The movement of all plants and parts of plants of yellow nutsedge and soil contaminated with propagules of the plant, including soil in nursery pots, is ~~((covered by this quarantine))~~ restricted. The movement of all balled and burlap nursery stock is ~~((covered by this quarantine))~~ restricted.

**AMENDATORY SECTION** (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

**WAC 16-752-315 Yellow nutsedge—Regulations.** Use of the property identified in WAC 16-752-305 is restricted as follows:

(1) All removal of sand or soil, potted nursery plants and other plants from the quarantine site, except as provided in subsection (6) of this section, is prohibited without a permit from the Thurston County noxious weed control board that details the end use and exact geographic destination.

(2) All land disturbing operations including excavation, utilities work, and similar activities require a one time, no fee permit from the weed board that obligates the operator to thoroughly hose down all equipment before leaving the quarantine area and record the next two areas where the equipment is used after leaving the quarantine area.

(3) All off-road vehicles are banned in the quarantine area without the written permission of the Thurston County noxious weed control board, except in designated parking areas.

(4) All weed control measures and irrigation practices in the quarantine area are to be conducted at the direction of the Thurston County noxious weed control board.

(5) Yellow nutsedge control shall take precedence over all other land uses in the quarantine area.

(6) The Thurston County noxious weed control board may designate and clearly mark portions of the site as free from infestation and allow removal of sand or soil from these areas without specific permit to nonagricultural sites: Provided, That adequate precautions are taken to prevent commingling of infested and noninfested soils and equipment used in the infested area is thoroughly cleaned before use in the area designated as uninfested.

**AMENDATORY SECTION** (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

**WAC 16-752-320 Yellow nutsedge—Costs of quarantine.** The costs of serving the notice required by RCW 17.10.210(2) shall be borne by the department. The costs of control work shall be borne by the landowner unless otherwise determined by the Thurston County noxious weed control board or the director in consultation with the Washington state noxious weed control board.

**AMENDATORY SECTION** (Amending WSR 98-01-056, filed 12/11/97, effective 1/11/98)

**WAC 16-752-330 Yellow nutsedge—Violation and penalty.** Any person who violates this quarantine shall have committed a civil infraction and shall be subject to the provisions of RCW 17.10.310 and 17.10.350 and WAC 16-750-020 which provides monetary penalties of up to one thousand dollars per infraction.

**AMENDATORY SECTION** (Amending Order 2050, filed 7/18/90, effective 8/18/90)

**WAC 16-752-400 Establishing quarantine.** The Lythrum (~~species~~) genus (Purple loosestrife) is an aggressive, semiaquatic, herbaceous perennial weed that has infested wetlands in the state of Washington causing serious harm to native plants and destroying habitat for birds and small mammals. Some varieties of loosestrife are cultivated and sold as nursery stock in the horticultural industry. The director of agriculture, pursuant to the powers provided in chapter 17.24

RCW and RCW 17.10.074 (1)(c), and chapter 15.13 RCW, has determined that the regulation and exclusion of this plant, plant parts, and seeds is necessary to preserve Washington wetlands from further infestation.

**AMENDATORY SECTION** (Amending WSR 05-21-028, filed 10/11/05, effective 11/11/05)

**WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles.** All plants and plant parts of the following are regulated articles under this chapter:

Scientific Name	Common Name
<i>Butomus</i> ( <del>(umbelatus)</del> ) <u>umbellatus</u>	flowering rush
<i>Cabomba caroliniana</i>	fanwort
<i>Crassula helmsii</i>	Australian swamp stonecrop
<i>Egeria densa</i>	Brazilian elodea
<i>Epilobium hirsutum</i>	hairy willow herb
<i>Glossostigma diandrum</i>	mud mat
<i>Gyneria maxima</i>	reed sweetgrass, tall manna grass
<i>Hydrilla verticillata</i>	hydrilla
<i>Hydrocharis morsus-ranae</i>	European frog-bit
<i>Lagarosiphon major</i>	African elodea
<i>Ludwigia hexapetala</i>	water primrose
<i>Ludwigia peploides</i>	<u>floating primrose-willow</u>
<i>Lysimachia vulgaris</i>	garden loosestrife
<i>Murdannia keisak</i>	marsh dew flower, Asian spiderwort
<i>Myriophyllum aquaticum</i>	parrotfeather
<i>Myriophyllum heterophyllum</i>	<u>variable-leaf milfoil</u>
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil
<i>Najas minor</i>	slender-leaved naiad, brittle naiad
<i>Nymphoides peltata</i>	yellow floating heart
<i>Sagittaria graminea</i>	grass-leaved arrowhead
<i>Sagittaria platyphylla</i>	delta arrowhead
<i>Schoenoplectus mucronatus</i>	<u>ricefield bulrush</u>
<i>Spartina alterniflora</i>	smooth cordgrass
<i>Spartina anglica</i>	common cordgrass
<i>Spartina densiflora</i>	dense-flowered cordgrass
<i>Spartina patens</i>	salt meadow cordgrass
<i>Stratiotes aloides</i>	<u>water soldier</u>
<i>Trapa natans</i>	water chestnut, bull nut
<i>Trapa bicornis</i>	water caltrap, devil's pod, bat nut
<i>Utricularia inflata</i>	swollen bladderwort

This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species.

Regulated status also applies to all synonyms of these botanical names.

**AMENDATORY SECTION** (Amending WSR 01-01-014, filed 12/6/00, effective 1/6/01)

**WAC 16-752-515 Wetland and aquatic weed quarantine—Exemptions.** The prohibition on transporting plants or plant parts in WAC 16-752-510 shall not apply to plants or plant parts collected for herbariums, research in control methods, creation of pressed specimens for educational or identification purposes and other scientific activities (~~(, except that)~~). However, all activities requiring live plants, except pressed specimens, ~~((are))~~ must be conducted under permit from the director and ~~((are))~~ must be conducted in such a way that no infestation is created. No permit is required to transport plants or plant parts, as a part of a noxious weed control activity, to a sanitary landfill, to be burned, or otherwise for disposition, if such activities are conducted under the supervision of an official weed control agency or other public agency with management responsibilities for the control efforts and are conducted in such a manner that seed dispersal or dispersal of propagative materials to uninfested areas is prevented. ~~((No permit is required for live plants for educational or training purposes, if the specimens are disposed of in such a manner as to prevent infestation.))~~

**AMENDATORY SECTION** (Amending WSR 04-19-004, filed 9/2/04, effective 10/3/04)

**WAC 16-752-610 Noxious weed seed and plant quarantine—Regulated articles.** All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following listed species are regulated under the terms of this noxious weed seed and plant quarantine:

Scientific Name	Common Names
<i>Abutilon theophrasti</i>	velvetleaf
<i>Alliaria petiolata</i>	garlic mustard
<i>Amorpha fruticosa</i>	indigobush, lead plant
<i>Anchusa officinalis</i>	common bugloss, alkanet, anchusa
<i>Anthriscus sylvestris</i>	wild chervil
<i>Brachypodium sylvaticum</i>	<u>false brome</u>
<i>Carduus acanthoides</i>	plumeless thistle
<i>Carduus nutans</i>	musk thistle, nodding thistle
<i>Carduus pycnocephalus</i>	Italian thistle
<i>Carduus tenuiflorus</i>	slenderflower thistle
<i>Centaurea calcitrapa</i>	purple starthistle
<i>Centaurea diffusa</i>	diffuse knapweed
<i>Centaurea jacea</i>	brown knapweed, rayed knapweed, brown centauri horse-knobs, hardheads
<i>Centaurea jacea x nigra</i>	meadow knapweed
<i>Centaurea biebersteinii</i>	spotted knapweed
<i>Centaurea macrocephala</i>	bighead knapweed
<i>Centaurea nigra</i>	black knapweed
<i>Centaurea nigrescens</i>	Vochin knapweed
<i>Chaenorrhinum minus</i>	dwarf snapdragon
<i>Crupina vulgaris</i>	common crupina
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	wild carrot, Queen Anne's lace

Scientific Name	Common Names
<i>Echium vulgare</i>	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
<i>Euphorbia esula</i>	leafy spurge
<i>Euphorbia oblongata</i>	eggleaf spurge
<i>Galega officinalis</i>	goatsrue
<i>Geranium lucidum</i>	<u>shiny geranium</u>
<i>Helianthus ciliaris</i>	Texas blueweed
<i>Heracleum mantegazzianum</i>	giant hogweed, giant cow parsnip
<i>Hibiscus trionum</i>	Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
<i>Hieracium aurantiacum</i>	orange hawkweed, orange paintbrush, red daisy flameweed, devil's weed, grim-the-collier
<i>Hieracium caespitosum</i>	yellow hawkweed, yellow paintbrush, devil's paintbrush, yellow devil, field hawkweed, king devil
<i>Hieracium floribundum</i>	yellow devil hawkweed
<i>Hieracium pilosella</i>	mouseear hawkweed
<i>Hieracium sabaudum</i>	<u>European hawkweed</u>
<i>Impatiens glandulifera</i>	policeman's helmet
<i>Isatis tinctoria</i>	dyers' woad
<i>Kochia scoparia</i>	kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed
<i>Lepidium latifolium</i>	perennial pepperweed
<i>Leucanthemum vulgare</i>	oxeye daisy, white daisy, whiteweed, field daisy, marguerite, poorland flower
<i>Linaria dalmatica</i> spp. <i>dalmatica</i>	Dalmatian toadflax
<i>Mirabilis nyctaginea</i>	wild four o'clock, umbrella-wort
<i>Onopordum acanthium</i>	Scotch thistle
<i>Polygonum cuspidatum</i>	Japanese knotweed
<i>Polygonum polystachyum</i>	Himalayan knotweed
<i>Polygonum sachalinense</i>	giant knotweed
<i>Polygonum x bohemicum</i>	Bohemian knotweed, Japanese and giant knotweed hybrid
<i>Proboscidea louisianica</i>	unicorn-plant
<i>Pueraria montana</i> var. <i>lobata</i>	kudzu
<i>Salvia aethiopsis</i>	Mediterranean sage
<i>Salvia pratensis</i>	meadow clary
<i>Salvia sclarea</i>	clary sage
<i>Senecio jacobaea</i>	tansy ragwort
<i>Silybum marianum</i>	milk thistle
<i>Solanum elaeagnifolium</i>	silverleaf nightshade
<i>Solanum rostratum</i>	buffaloburr
<i>Soliva sessilis</i>	lawnweed
<i>Sorghum halepense</i>	johnsongrass
<i>Spartium junceum</i>	Spanish broom
<i>Tamarix ramosissima</i>	saltcedar
<i>Thymelaea passerina</i>	spurge flax
<i>Torilis arvensis</i>	hedgearsley
<i>Ulex europaeus</i>	gorse, furze
<i>Zygophyllum fabago</i>	Syrian bean-caper

This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species. Regulated status also applies to all synonyms of these botanical names.

**WSR 09-19-007**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed September 3, 2009, 8:41 a.m., effective October 4, 2009]

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

Purpose: This rule-making order amends chapter 16-662 WAC, Weights and measures—National Handbooks, by adopting:

(1) The 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195;

(2) The 2009 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality);

(3) Modifications to the multi-tier pricing requirements specified in NIST Handbook 44 relative to motor fuels; and

(4) Clarifications to currently existing state retail dispenser labeling requirements for lower blends of biodiesel, so that the rule remains understandable in the context of recent organizational changes in the latest version of NIST Handbook 130.

Citation of Existing Rules Affected by this Order: Amending WAC 16-662-100, 16-662-105, 16-662-110, and 16-662-115.

Statutory Authority for Adoption: Chapters 19.94, 19-112, and 34.05 RCW.

Adopted under notice filed as WSR 09-15-178 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 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 4, Repealed 0.

Date Adopted: September 3, 2009.

Dan Newhouse  
 Director

**AMENDATORY SECTION** (Amending WSR 07-05-083, filed 2/21/07, effective 3/24/07)

**WAC 16-662-100 What is the purpose of this chapter?** (1) This chapter establishes requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices

addressed in the *National Institute of Standards and Technology (NIST) NIST Handbook 44*;

(b) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(c) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(d) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(e) Uniform examination procedure for price verification addressed in *NIST Handbook 130*; and

(f) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*.

(3)(a) *NIST Handbook 44*, *NIST Handbook 130* and *NIST Handbook 133*, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. They are also available on the National Institute of Standards and Technology web site at (<http://ts.nist.gov/ts/htdocs/230/235/ownhome.htm>) <http://ts.nist.gov/WeightsAndMeasures/index.cfm>.

(b) For information regarding the contents and application of these publications, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail [wts&measures@agr.wa.gov](mailto:wts&measures@agr.wa.gov).

**AMENDATORY SECTION** (Amending WSR 08-05-007, filed 2/7/08, effective 3/9/08)

**WAC 16-662-105 What national weights and measures standards are adopted by the Washington state department of agriculture (WSDA)?** The WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2008)) 2009 Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	Fourth Edition (January 2005) of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((2008)) 2009 Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> , specifically:



National standard for:	Contained in the:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulations</i> adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2008)) <u>2009</u> Edition
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2008)) <u>2009</u> Edition
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2008)) <u>2009</u> Edition
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks <u>and dispenser filters</u> ; condemned product((s)); product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels(<del>(-Petroleum Products,)</del>) and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2008)) <u>2009</u> Edition

**AMENDATORY SECTION** (Amending WSR 07-01-115A, filed 12/20/06, effective 1/20/07)

**WAC 16-662-110 Does the WSDA modify NIST Handbook 44?** The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

Modified Section:	Modification:
General Code: Section G-UR.4.1. Maintenance of Equipment	In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read: "Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator shall not be considered "maintained in a proper operating condition.""
<u>Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price</u>	<u>Modify subsection (b) under section S.1.6.4.1. Unit Price, to read: Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the consumer prior to the delivery of the product or after prepayment for the product but prior to its delivery. It is not necessary that all of the unit prices for all grades, brands, blends, or mixtures be simultaneously displayed prior to the delivery of the product. This subsection shall not apply to fleet sales, other contract sales, or truck refueling sales (e.g., sales from dispensers used to refuel trucks).</u>

AMENDATORY SECTION (Amending WSR 07-05-083, filed 2/21/07, effective 3/24/07)

**WAC 16-662-115 Does the WSDA modify NIST Handbook 130?** The WSDA adopts the following modifications to the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
(1) Section 2.20. Gasoline-Oxygenate Blends	<p>Modify section 2.20.1. Method of Retail Sale ((-)). Type of Oxygenate must be Disclosed, to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)</p> <p>Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.</p>
(2) Section 2.23. Animal Bedding	<p>Add a new subsection((-)) which reads: 2.23.1. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof.</p>
(3) Section 2.31.2 Labeling of Retail Dispensers	<p><u>Add a new subsection which reads: 2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "Contains up to 5% Biodiesel." Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends.</u></p> <p><u>Add a new subsection which reads: 2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend).</u></p>
(4) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the *Uniform Engine Fuels(~~(Petroleum Products,)) and Automotive Lubricants Regulation~~* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) Section 2.12. Motor Oil	Delete section 2.12.
(2) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(3) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(4) Section 3.2.6. Method of Retail Sale. Type of Oxygenate must be Disclosed	Modify section 3.2.6 to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(5) Section 3.2.7. Documentation for Dispenser Labeling Purposes	Modify section 3.2.7 to read: The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(6) Section 3.8.2. ((Retail Dispenser)) Labeling Requirements	<del>((Modify section 3.8.2 to read: Each retail dispenser of not less than one percent and not more than ten percent, by volume, fuel ethanol must be labeled "Contains up to 10% Ethanol."))</del> Add a new subsection which reads: (c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(7) Section 3.9.2. Retail Dispenser Labeling	<del>((Modify section 3.9.2 to read:))</del> Add a new subsection which reads: (c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)
(8) Section 3.13. Oil	Delete section 3.13.
(9) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.

Modified Section:	Modification:
<p>(10) Section 3.15.2. Labeling of Retail Dispensers  <del>((Containing between 5% and 20% Biodiesel))</del></p>	<p><del>((Modify section 3.15.2 to read: 3.15.2.))</del> <u>Add a new subsection which reads: 3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "Contains up to 5% Biodiesel." ((3.15.2.1.)) Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends.</u>  <del>((Delete section 3.15.2.2.))</del>  <u>Add a new subsection which reads: 3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend).</u></p>
<p><del>((11) Section 3.15.3. Labeling of Retail Dispensers Containing more than 20% Biodiesel</del></p>	<p><u>Modify section 3.15.3 to read: 3.15.3. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend.))</u></p>
<p><del>((12))</del> <u>(11) Section ((3.15.5)) 3.15.4. Exemption</u></p>	<p>Delete section <del>((3.15.5))</del> <u>3.15.4.</u></p>
<p><del>((13))</del> <u>(12) Section 7. Test Methods and Reproducibility Limits</u></p>	<p>Add a new subsection <del>((that))</del> <u>which</u> reads: 7.3. Biodiesel Blends <del>((-))</del>. The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products - Determination of fatty methyl esters (FAME) in middle distillates - Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.</p>

**WSR 09-19-010**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed September 3, 2009, 9:48 a.m., effective October 4, 2009]

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

Purpose: The department is amending these rules to reflect the current content of the underlying statutes.

- WAC 458-16-280 and 458-16-282, which describe the property tax exemptions for art, scientific, and historical collections and for musical, dance, artistic, dramatic and literary associations, are being amended to incorporate changes in the authorizing statute. The changes to RCW 84.36.060 allow the exempt property to be used by entities not entitled to receive a property tax exemption.
- WAC 458-19-070 and 458-19-075, which outline the process used in prorationing property tax levies under RCW 84.52.043 and 84.52.010, are being updated to include new property tax levies and the correct order for prorationing property tax levies.
- Recent changes to RCW 84.34.037 and 84.34.041 require the amendment of WAC 458-30-230 and 458-30-232 because there is a new procedure that may be used when classifying land as open space land under RCW 84.34.037 and timber land under RCW 84.34.041.
- WAC 458-30-295, 458-30-300, and 458-30-700 are being amended because of recent legislative

changes to RCW 84.34.108, regarding the removal of land from classification under chapter 84.34 RCW, and to RCW 84.33.140 and 84.33.145, regarding the removal of land from designation under chapter 84.33 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-280 Art, scientific, and historical collections, 458-16-282 Musical, dance, artistic, dramatic and literary associations, 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded, 458-19-075 Constitutional one percent limit calculation, 458-30-230 Application for open space classification, 458-30-232 Application for timber land classification, 458-30-295 Removal of classification, 458-30-300 Additional tax—Withdrawal or removal from classification, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

Statutory Authority for Adoption: RCW 84.08.070, 84.34.141, 84.36.865, 84.52.0502.

Adopted under notice filed as WSR 09-14-137 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 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 0, Repealed 0.

Date Adopted: September 3, 2009.

Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 99-18-008, filed 8/19/99, effective 9/19/99)

**WAC 458-16-280 Art, scientific, and historical collections.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to art, scientific, or historical collections.

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

(a) "Governmental entity" means any political unit or division of the federal, state, city, county, or municipal government.

(b) "Property" means all real and personal property exclusively used to secure, maintain, and exhibit art, scientific, or historical collections.

(3) **Exemption for existing property.** All art, scientific, or historical collections owned by associations maintaining and exhibiting the collections to the general public and not for profit, together with all real and personal property owned by these associations and used exclusively to secure, maintain, and exhibit the collections, shall be exempt from taxation under the following conditions:

(a) An organization, association, or corporation must be organized and operated exclusively for artistic, scientific, or historical purposes.

(b) The organization, association, or corporation organized and operated for artistic, scientific, or historical purposes must receive a substantial part of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or function shall not be included within the figures used to calculate "a substantial part" of the organization's, association's, or corporation's income.

(i) For example, an art museum may receive support from a city government and from donations made by the general public in addition to general admission fees paid by visitors. When determining whether the art museum receives a substantial part of its income from a governmental entity or through contributions from the general public, the admission fees may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial part for its support must maintain records identifying the individuals who donate their services and the number of

hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to maintain and exhibit art, scientific, or historical collections, may qualify for exemption under certain circumstances. A non-profit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used to maintain and exhibit an art, scientific, or historical collection.

(a) Acceptable proof of a specific and active building or remodeling program shall include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction shall not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) **Use of exempt property by entities not entitled to a property tax exemption.** As a general rule, exempt property may not be used by an entity not entitled to receive a property tax exemption under this chapter. The use of exempt property by an ineligible entity will nullify the exemption for the assessment year. However, the property exemption will not be nullified if:

(a) The property is used by entities not entitled to a property tax exemption under this chapter for periods of not more than fifty days in a calendar year;

(b) The property is not used for pecuniary gain or to promote business for more than fifteen of the fifty days in a calendar year; and

(c) The property is used for:

(i) Artistic, scientific, or historic purposes;

(ii) The production and performance of musical, dance, artistic, dramatic, or literary works; or

(iii) Community gatherings or assembly, or meetings.

(d) The fifty and fifteen day limitations set forth in (a) and (b) of this subsection do not include the days the exempt property is used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as described in this subsection.

(6) **Additional requirements.** Any organization, association, or corporation ~~((that applies))~~ applying for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied

with to obtain a property tax exemption pursuant to RCW 84.36.060.

AMENDATORY SECTION (Amending WSR 99-18-008, filed 8/19/99, effective 9/19/99)

**WAC 458-16-282 Musical, dance, artistic, dramatic and literary associations.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to organizations, associations, or corporations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works.

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

(a) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(b) "Property" means all real and personal property exclusively used to produce or perform musical, dance, artistic, dramatic, or literary works.

(3) **Exemption.** All real and personal property owned by or leased to a nonprofit organization, association, or corporation engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit shall be exempt from taxation under the following conditions:

(a) The property must be used exclusively to produce or perform musical, dance, artistic, dramatic, or literary works.

(b) An organization, association, or corporation must be organized and operated exclusively for musical, dance, artistic, dramatic, literary, or educational purposes.

(c) The organization, association, or corporation organized and operated for musical, dance, artistic, dramatic, literary, or educational purposes must receive a substantial portion of its income from a governmental entity or from direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from producing or performing musical, dance, artistic, dramatic, literary, or educational works shall not be included within the figures used to calculate "a substantial part" of the organization's, association's or corporation's income.

(i) For example, a theater may receive support from a city government and from donations made by the general public in addition to ticket sales for admission to its performances. When determining whether the theater receives a substantial part of its income from a governmental entity or through contributions from the general public, the ticket sales may not be considered as contributions from the general public.

(ii) Any organization that relies on services donated by the general public for a substantial portion of its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to be used by associations engaged in the production and perfor-

mance of musical, dance, artistic, dramatic, literary, or educational works, may qualify for exemption under certain circumstances. A nonprofit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose, may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used by associations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works.

(a) Acceptable proof of a specific and active building or remodeling program shall include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction shall not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) **Use of exempt property by entities not entitled to a property tax exemption.** As a general rule, exempt property may not be used by an entity not entitled to receive a property tax exemption under this chapter. The use of exempt property by an ineligible entity will nullify the exemption for the assessment year. However, the property exemption will not be nullified if:

(a) The property is used by entities not entitled to a property tax exemption under this chapter for periods of not more than fifty days in a calendar year;

(b) The property is not used for pecuniary gain or to promote business for more than fifteen of the fifty days in a calendar year; and

(c) The property is used for:

(i) Artistic, scientific, or historic purposes;

(ii) The production and performance of musical, dance, artistic, dramatic, or literary works; or

(iii) Community gatherings or assembly, or meetings.

(d) The fifty and fifteen day limitations set forth in (a) and (b) of this subsection do not include the days the exempt property is used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as described in this subsection.

(6) **Additional requirements.** Any organization, association, or corporation (~~that applies~~) applying for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

AMENDATORY SECTION (Amending WSR 06-02-008, filed 12/22/05, effective 1/22/06)

**WAC 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded.** (1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This ~~((rule))~~ section describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) ~~Levies ((for financing affordable housing for very low income households under RCW 84.52.105;~~
- (e) ~~Levies for acquiring conservation futures under RCW 84.34.230;~~
- (f) ~~Levies for criminal justice purposes under RCW 84.52.135;~~
- (g) ~~Levies for emergency medical care or emergency medical services under RCW 84.52.069;~~
- (h) ~~Levies by or for county ferry districts under RCW 36.54.130;~~
- (i) ~~The portion of fire protection district levies protected under RCW 84.52.125; and~~
- (j) ~~The portion of metropolitan park district levies protected under RCW 84.52.120)) by or for county ferry districts under RCW 36.54.130;~~
- (e) Levies for acquiring conservation futures under RCW 84.34.230;
- (f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (g) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (h) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (i) The portion of fire protection district levies protected under RCW 84.52.125;
- (j) Levies for criminal justice purposes under RCW 84.52.135; and
- (k) Levies for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009.

(3) **Prorationing under consolidated levy rate limitation.** RCW 84.52.010 sets forth the prorationing order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory

aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this ~~((rule))~~ section is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorationing is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125 fire protection districts may protect up to twenty-five cents per thousand dollars of assessed value of

the total levies made under RCW 52.16.140 and 52.16.160 from prorationing.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.-125 come into play; that is, a fire protection district may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorationing under RCW 84.52.043(2), if the total levies would otherwise be prorated under RCW 84.52.-010 (2)(e) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand

dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts under RCW 86.15.160.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130 (~~park and recreation districts under RCW 36.69.145, and park and recreation service areas under RCW 36.68.525~~) on a pro rata basis until the remaining levy capacity equals zero.

**(4) Example.**

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County Road	1.8000	NONE	1.8000	1.850
	2.2500	NONE	2.2500	
Library	.5000	NONE	.5000	.350
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	
Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

1. Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

2. Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

3. Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

4. The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the orig-



inal levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. And finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital respectively are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 06-02-008, filed 12/22/05, effective 1/22/06)

**WAC 458-19-075 Constitutional one percent limit calculation.** (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This ~~((rule))~~ section explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** After prorationing under RCW 84.52.043 (the five dollar and ninety cent per thousand dollars of assessed value limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The following regular levy rates are used to calculate the combined levy rate of any particular tax code area:

- (i) The local rate for the state levy;
- (ii) ~~((The levy rate for financing affordable housing for very low income households under RCW 84.52.105;~~
- ~~((iii) The levy rate for acquiring conservation futures under RCW 84.34.230;~~
- ~~((iv) The levy rate for criminal justice purposes under RCW 84.52.135;~~
- ~~((v) The levy rate for emergency medical care or emergency medical services under RCW 84.52.069;~~
- ~~((vi) The levy rate by or for county ferry districts under RCW 36.54.130;~~
- ~~((vii) The levy rate for the portion of fire protection district levies protected under RCW 84.52.125; and~~
- ~~((viii) The levy rate for the portion of metropolitan park district levies protected under RCW 84.52.120)) Levies by or for county ferry districts under RCW 36.54.130;~~
- (iii) Levies for acquiring conservation futures under RCW 84.34.230;
- (iv) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(v) Levies for financing affordable housing for very low-income households under RCW 84.52.105;

(vi) The portion of metropolitan park district levies protected under RCW 84.52.120;

(vii) The portion of fire protection district levies protected under RCW 84.52.125;

(viii) Levies for criminal justice purposes under RCW 84.52.135; and

(ix) The levy rate for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009.

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Prorationing - constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded. The order contained in this statute begins with the taxing districts that are the first to have their levy rates either reduced or eliminated. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Levy rates are reduced or eliminated on a pro rata basis within each tier of taxing district levies until the combined levy rate no longer exceeds one percent of the true and fair value of property.

If the constitutional one percent limit is exceeded, the following levies are to be reduced or eliminated in the following order until the combined levy rate no longer exceeds the maximum effective levy rate:

(a) The levy rate for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009;

~~((b))~~ (b) The levy rate for fire protection districts protected under RCW 84.52.125;

~~((c))~~ (c) The levy rate for criminal justice purposes imposed under RCW 84.52.135;

~~((d))~~ (d) The levy rate for county ferry districts under RCW 36.54.130;

~~((e))~~ (e) The ~~((twenty-five cents per thousand dollars of assessed value))~~ levy rate for metropolitan park districts protected under RCW 84.52.120;

~~((f))~~ (f) The levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low-income households under RCW 84.52.105, ~~((acquiring conservation futures under RCW 84.34.230;))~~ and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value are reduced on a pro rata basis or eliminated;

~~((g))~~ (g) The levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069;

~~((h))~~ (h) The levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts

under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130(~~(-park and recreation districts under RCW 36.69.145, and park and recreation service areas under RCW 36.68.525))~~) are reduced on a pro rata basis or eliminated;

~~((h))~~ (i) The levy rate for flood control zone districts under RCW 86.15.160;

~~((i))~~ (j) The levy rates for all other junior taxing districts, except fire protection districts under RCW 52.16.140 and 52.16.160, regional fire protection service authorities under RCW 52.26.140, library districts under RCW 27.12.050 and 27.12.150, and the first fifty cents per thousand dollars of assessed value for metropolitan park districts under RCW 84.52.120 and for public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;

~~((j))~~ (k) The levy rate of the first fifty cents per thousand dollars of assessed value for metropolitan park districts created on or after January 1, 2002 under RCW 35.61.210;

~~((k))~~ (l) The levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c) are reduced on a pro rata basis or eliminated;

~~((l))~~ (m) The levy rates for fire protection (~~(districts)~~) service authorities under RCW 52.16.130, regional fire protection districts under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and (~~the levy rate for first fifty cents per thousand dollars of assessed value~~) for public hospital districts under RCW 70.44.060(6) (~~and for metropolitan park districts under RCW 35.61.210 created before January 1, 2002,~~) are reduced on a pro rata basis or eliminated;

~~((m))~~ (n) The levy rates for the county, county road dis-  
trict, and (~~(a)~~) for city or town purposes are reduced on a pro rata basis or eliminated; and

~~((n))~~ (o) The levy rate for the state for the support of common schools.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

**WAC 458-30-230 Application for open space classification.** (1) **Introduction.** This section explains the application process for an applicant who seeks to have land classified or reclassified as open space land under RCW 84.34.020(1).

(2) **Where to submit.** An application for classification or reclassification of land as open space shall be made to the county legislative authority of the county in which the land is located.

(3) **Granting authority.** The identity of the entity that will act as the granting authority shall be determined by the location of the land the applicant seeks to classify or reclassify as open space land. The granting authority shall be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of the county, the county legislative authority shall be the granting authority.

(b) If the parcel(s) of land is located in an incorporated area of the county, a copy of the application for classification or reclassification shall be forwarded to the city legislative authority in which the land is located. (~~The~~) Applications must be acted upon by:

(i) A granting authority (~~(shall be)~~) composed of three members of the county legislative authority and three members of the city legislative authority in a meeting where members may be physically absent but participating through a telephonic connection; or

(ii) Separate affirmative acts by both the county and city legislative authorities whereby each authority affirms the entirety of the application without modification or each authority affirms the application with identical modifications.

(4) **Application process.** An application for classification or reclassification of a parcel(s) of land as open space land shall be processed as follows:

(a) **Comprehensive land use plan.** The granting authority shall determine whether or not the land is located in an area designated as "open space" by an official comprehensive land use plan adopted by a city or county and zoned accordingly.

(i) If the land is in an area subject to a comprehensive plan, the application for classification or reclassification shall be treated in the same manner as a proposed amendment to that plan.

(ii) If the land is in an area not subject to a comprehensive plan, a public hearing on the application shall be conducted. A notice of this hearing shall be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification that is the subject of the public hearing shall be notified in writing of the date, time, and location of this hearing.

(b) **Factors to consider.** In determining whether an application for classification or reclassification as open space land should be approved, the granting authority:

(i) May take particular notice of the benefits to the general welfare of preserving the current use of the parcel(s) of land described in the application; and

(ii) Shall consider the following:

(A) The revenue loss or tax shift that will result from granting the application;

(B) Whether granting the application for classification or reclassification of land under RCW 84.34.020 (1)(b) will:

(I) Conserve or enhance natural, cultural, or scenic resources;

(II) Protect streams, stream corridors, wetlands, natural shorelines, and aquifers;

(III) Protect soil resources, unique or critical wildlife, and native plant habitat;

(IV) Promote conservation principles by example or by offering educational opportunities;

(V) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces;

(VI) Enhance recreation opportunities;

(VII) Preserve historic and archaeological sites;

(VIII) Preserve visual quality along highway, road, and street corridors or scenic vistas; or

(IX) Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the land; and

(C) Whether granting the application for classification or reclassification of land as farm and agricultural conservation land (RCW 84.34.020 (1)(c)) will:

(I) Either preserve land previously classified as farm and agricultural land under RCW 84.34.020(2) or preserve traditional farmland not classified under chapter 84.33 or 84.34 RCW;

(II) Preserve land with a potential for returning to commercial agriculture; and

(III) Affect any other factors relevant in weighing general benefits of preserving the current use of the property.

(iii) In addition to the foregoing concerns, the granting authority shall consider:

(A) The existence of any mining claim or mining lease on the land, and if such a claim or lease will seriously interfere with the considerations stated in (b)(i) and (ii) of this subsection. If the granting authority determines serious interference will occur, it may deny the application in whole or in part. If a mining claim or mining lease is obtained after the land is classified or reclassified, the same determination must be made in deciding whether serious interference will occur; and

(B) The zoning of the parcel(s) of land at the time the application for classification or reclassification is filed.

(5) **Approval or denial of application.** The granting authority shall either approve or disapprove the application within six months of the date the completed application was received by the county legislative authority.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met including, but not limited to, the granting of easements. As a condition of granting an application for open space classification, the granting authority may not require public access on land classified under RCW 84.34.020 (1)(b)(iii) to promote the conservation of wetlands.

(c) If approved, valuation of the land at its current use value shall begin on January 1 of the year following the year the application was filed. However, any application approved on or after July 1 of any year shall cause the land to be listed on the assessment roll at its current use value on January 1 of the following assessment year.

(d) When the application for classification or reclassification as open space has been approved, the granting authority shall prepare an agreement. See WAC 458-30-240 for a detailed description of this agreement.

(e) The granting or denial of an application for classification or reclassification as open space land is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

(6) **Public benefit rating system.** When an application for classification or reclassification under RCW 84.34.020

(1)(b) and (c) is submitted regarding land that is subject to a public benefit rating system adopted under RCW 84.34.055, the county legislative authority shall rate the parcel(s) of land in accordance with the public benefit rating system to determine whether the application should be approved or denied.

Land that was classified under RCW 84.34.020 (1)(b) or (c) prior to the adoption of a public benefit rating system does not have to requalify for classification under the criteria of the public benefit rating system. The land shall not be removed from classification by an assessor. This land may be rated according to the public benefit rating system as appropriate. (See WAC 458-30-330(~~, 458-30-335, and 458-30-340~~)) for more information about the public benefit rating system.)

(7) **Record retention.** The granting authority shall keep a record of each application, agreement, and records relating to each agreement.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

**WAC 458-30-232 Application for timber land classification. Introduction.** This (~~rule~~) section explains the application process used by an applicant who seeks to have land classified or reclassified as timber land under RCW 84.34.020(3).

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

(1) **"Stand of timber"** means a stand of trees that will yield log and/or fiber:

(a) Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; and

(b) Of sufficient value to cover at least all the costs of harvest and transportation to available markets.

(2) **"Timber management plan"** means a plan prepared by a professional forester, or by another person who has adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes the following elements:

(a) A legal description of the land;

(b) A statement that the timber land is held in contiguous ownership of at least five acres and is primarily devoted to and used to grow and harvest timber;

(c) A brief description of the timber on the timber land or, if the timber has been recently harvested, the owner's plan to restock the land with timber;

(d) A statement about whether the timber land is also used to graze livestock;

(e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the timber land within three years.

(3) **Where to submit.** An application for classification or reclassification of land as timber land under RCW 84.34.020(3) is submitted to the county legislative authority of the county in which the land is located.

(4) **Granting authority.** The identity of the entity that will act as the granting authority will be determined by the location of the land the applicant seeks to classify or reclassify as timber land. The granting authority will be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of county, the county legislative authority is the granting authority.

(b) If the parcel(s) of land is located in an incorporated area, a copy of the application for classification is forwarded to the city legislative authority in which the land is located. ~~((The))~~ Applications must be acted upon by:

(i) A granting authority ((is)) composed of three members of the county legislative body and three members of the city legislative authority in a meeting where members may be physically absent but participating through a telephonic connection; or

(ii) Separate affirmative acts by both the county and city legislative authorities whereby each authority affirms the entirety of the application without modification or each authority affirms the application with identical modifications.

**(5) Application process.**

(a) **Consider all relevant evidence.** The granting authority will act upon the application with due regard to all relevant evidence.

(b) **Information that must accompany application.** An application for classification or reclassification of a parcel(s) of land as timber land is made on forms prepared by the department. An application must include the following information and be accompanied by a timber management plan as defined in subsection (2) of this ~~((rule))~~ section:

(i) A legal description of or the parcel number(s) of all land the applicant desires to be classified as timber land;

(ii) The date or dates the land was acquired;

(iii) A brief description of the timber on the land or, if the timber has been harvested, the owner's plan for restocking;

(iv) If the timber or forest management plan for the land has existed for more than one year, the application must indicate the nature and extent to which the plan has been implemented or changed;

(v) Whether the land is used for grazing;

(vi) Whether the land has been subdivided or a plat has been filed with respect for the land;

(vii) Whether the land and the applicant have complied with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(viii) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;

(ix) Whether the land is subject to a lease, option, or other right that permits the land to be used for a purpose other than growing and harvesting timber;

(x) A summary of the applicant's past experience and activities in growing and harvesting timber;

(xi) A summary of the applicant's current and continuing activities in growing and harvesting of timber; and

(xii) A statement that the applicant is aware of the potential tax liability involved if the land ceases to be classified as timber land.

(c) **Solitary factors that will result in automatic denial.** An application may be denied for any of the following reasons without regard to any other factor:

(i) The land does not contain a stand of timber as defined in subsection (1) of this ~~((rule))~~ section, as well as in chapter 76.09 RCW, and WAC 222-16-010. This reason alone is not sufficient to deny the application if:

(A) The land has been recently harvested or supports a growth of brush or noncommercial type timber and the application includes a plan for restocking within three years or a longer period necessitated because seed or seedlings are unavailable; or

(B) Only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions.

(ii) The applicant, with respect to the land for which classification or reclassification is sought, has failed to comply with a final administrative or judicial order regarding a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW.

(iii) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.

(6) **Public hearing required.** An application for classification of land as timber land will be approved or denied after a public hearing on the application is held. A notice of this hearing is to be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification is to be notified in writing of the date, time, and location of the public hearing.

(7) **Timber management plan required.** A timber management plan must be filed with the county legislative authority either:

(a) When an application for classification is submitted; or

(b) Within sixty days of the date an application for reclassification under chapter 84.34 RCW or from designated forest land under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until the timber management plan is received. If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(c) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for classification or reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for a timber management plan, the county legislative authority should delay processing the application until this plan is received. If this plan is not received by the date set by the assessor, the application for classification or reclassification will be automatically denied.

(8) **Approval or denial of application.** The granting authority will either approve or disapprove the application for

classification or reclassification within six months of the date it is received by the county legislative authority.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met. The granting authority may not require the granting of easements for land classified as timber land.

(c) The granting or denial of an application for classification as open space land or reclassification is a legislative determination and is reviewable only for arbitrary and capricious actions.

**AMENDATORY SECTION** (Amending WSR 01-24-030, filed 11/27/01, effective 12/28/01)

**WAC 458-30-295 Removal of classification.** (1) **Introduction.** This ~~((rule))~~ section discusses the circumstances that may cause land to be removed from classification and the actions an assessor takes to remove the land, in whole or in part, from classification under chapter 84.34 RCW.

(2) **General requirement - removal process.** If land classified under chapter 84.34 RCW is applied to a use other than the one for which classification is granted, the owner must notify the assessor of the change in use within sixty days of the change. If the new use of the land does not qualify for classification under chapter 84.34 RCW, the land must be removed from classification and, in most cases, additional tax, interest, and a penalty are imposed. Land may be totally or partially removed from classification depending on the reason(s) for the removal. See WAC 458-30-300 for details about the additional tax, interest, and penalty imposed when land is removed.

(3) **Circumstances that cause removal of land from classification.** When any of the following actions occur, the assessor shall remove all or a portion of the land from classification:

(a) Receipt of a written notice from the owner directing the assessor to remove the land from classification;

(b) Sale or transfer of the land to an owner that makes the land exempt from property taxes, except a transfer resulting from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the land for the same use as before;

(c) Any change in use that occurs after a request to withdraw classification is made under RCW 84.34.070 and before the actual withdrawal of the classification occurs;

(d) Sale or transfer of classified land to a new owner who is required to pay property tax and who does not sign the notice of classification continuance, except a transfer to an owner who is an heir or devisee of a deceased owner;

(e) Failure of an owner to respond to a request from the assessor for data regarding the use of the land, productivity of typical crops, and similar information pertinent to continued classification and assessment of the land (see RCW 84.34.-121 and WAC 458-30-270);

(f) The assessor denies an owner's request for reclassification and the land no longer meets the criteria under which it was originally classified; ~~((or))~~

(g) The assessor determines, based on field inspections, analysis of income and expense data, or any other reasonable evidence, that the land no longer meets the criteria for classification under chapter 84.34 RCW; or

(h) The assessor discovers that the land was classified under chapter 84.34 RCW in error.

(i) Example 1. During an on-site inspection, the assessor discovers that classified farm and agricultural land has been paved over and is used as a parking lot for school buses.

(ii) Example 2. Based on information released at a public meeting of the county planning commission, the assessor learns that an owner of classified timber land has harvested all timber from the land, the land has been platted, public services such as roads, sewers, and domestic water supply have been made available to the platted land, and houses have been built on the land. This information has led the assessor to conclude that the use of the land has changed or that the land no longer meets the criteria for classification as timber land.

(4) **Procedure when an assessor discovers a change in use.** If the assessor determines that the land is not being used for a classified use, the assessor must ~~((notify))~~ provide the owner ~~((in writing))~~ a written notice regarding this determination ~~((and))~~; e.g., the Notice of Intent to Remove Current Use Classification form. The assessor may not remove the land from classification until the owner has had an opportunity to respond to the assessor's determination.

(a) The owner must respond, in writing, to the assessor's inquiry about the use of the classified land no later than thirty calendar days following the postmark date the assessor's inquiry was mailed to the owner.

(b) If the parcel in question is classified open space land or timber land, the assessor may ask, but is not required to ask, the granting authority to provide reasonable assistance in determining whether the classified land continues to meet the criteria for classification. The granting authority shall provide this assistance within thirty days of receiving the assessor's request for assistance (see RCW 84.34.108(1)).

(c) Unless the owner demonstrates to the assessor that the classified use of the land has not changed, the assessor will remove the land from classification and impose additional tax, interest, and penalty from the date of the change in use (see RCW 84.34.080 and 84.34.108).

(5) **Procedure for partial removal.** If the use of only a portion of the classified land has changed and it no longer qualifies for classification under chapter 84.34 RCW, the assessor will remove the nonqualifying portion of the classified land. The remaining parcel must satisfy the same requirements the entire parcel was required to meet when the land was originally granted classification unless different criteria are required by statute because of the reduced size of the land that remains classified.

(a) The assessor may ask the owner of the parcel that will remain classified to submit information relevant to its continuing eligibility under chapter 84.34 RCW. See WAC 458-30-270 for more details.

(b) If the parcel is classified farm and agricultural land, the assessor will verify that the remaining portion meets the requirements of RCW 84.34.020(2).

(c) If the parcel is classified open space or timber land, the assessor will consult with the granting authority before determining whether the remaining portion meets the requirements of RCW 84.34.020 (1) or (3). The granting authority and assessor may ask the owner to submit pertinent data for this determination.

(d) The assessor may segregate the portion of land from which classification is being removed for valuation and taxation purposes.

**(6) Transactions that do not cause land to be removed from classification.** Land cannot be removed from classification solely because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a ~~((fee interest or a))~~ conservation easement ~~((for the riparian open space program))~~ of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040.

**(7) Notice to owner.** Within thirty days of the removal of land from classification, the assessor must notify the owner in writing of the reason(s) for removal. The removal notice must explain the steps an owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

**(8) Right of appeal.** The seller, transferor, or owner of classified land may appeal the removal from classification to the board of equalization of the county in which the land is located. The appeal must be filed within thirty calendar days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the date the notice of removal was mailed by the assessor or given to the owner, or on or before July 1st of the year of removal, whichever is later (RCW 84.40.038).

**(9) Assessor's duty after removal.** Unless the removal is reversed on appeal, the assessor places the land on the assessment roll at its true and fair value determined in accordance with the county's approved revaluation plan. The value on the date of removal is the true and fair value as of January 1st of the year of removal. The assessment roll lists both the assessed value of the land before and after the removal of classification. Taxes for the current tax year are prorated according to the portion of the year to which each assessed value applies.

**(10) Possible segregation after removal.** If only a portion of the land is being removed from classification, the assessor must segregate the affected portion for valuation and tax purposes.

**(11) Additional tax, interest, and penalty are due when land is removed.** The additional tax, interest, and penalty imposed by RCW 84.34.080 and 84.34.108 are due ~~((when land is removed from classification))~~ and payable to the treasurer thirty days after the owner is notified of the amount due, unless the removal is the result of one of the

exempt circumstances or transactions listed in RCW 84.34.108(6). (See WAC 458-30-300.)

AMENDATORY SECTION (Amending WSR 07-21-097, filed 10/18/07, effective 11/18/07)

**WAC 458-30-300 Additional tax—Withdrawal or removal from classification.** (1) **Introduction.** This ~~((rule))~~ section outlines the withdrawal and removal procedures, events that trigger removal, and how to calculate the additional property tax ("additional tax"), interest, and penalty that may be imposed because land is withdrawn or removed from classification. When land is withdrawn or removed additional tax and interest are due. A twenty percent penalty is also due when land is removed from classification (see RCW 84.34.108 and 84.34.070(2)).

(2) **Duties of assessor and treasurer.** As soon as possible after determining that the land no longer qualifies for classification under chapter 84.34 RCW ~~((or))~~, the use of the land has changed, or the land was classified under chapter 84.34 RCW in error, the assessor must ~~((notify))~~ provide the owner ~~((in writing))~~ a written notice regarding this determination and of his or her intent to remove the land from classification; e.g., the Notice of Intent to Remove Current Use Classification form. The assessor may not remove the land from classification until the owner has had an opportunity to be heard on the issue of removal.

(a) The owner has thirty calendar days following the postmark date on the assessor's notice of intent to remove to respond, in writing, to the assessor about the removal of the land from classification. After giving the owner an opportunity to be heard and unless sufficient information or evidence is presented as to why the land should not be removed from classified status, the land will be removed from classification as of the date the land no longer qualified for classification or the use of the land changed.

(b) Within thirty days of removing land from classification, the assessor notifies the owner, in writing, about the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(c) Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value on ~~((the date))~~ January 1st of the year of removal from classification. The assessment roll will list the assessed value of the land before and after the removal from classification. Taxes will be allocated to the part of the year to which each assessed value applies; that is, current use and true and fair value.

(d) The assessor computes the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this ~~((rule))~~ section.

(e) The assessor notifies the treasurer of the amount of additional tax, interest, and penalty due.

(f) The treasurer mails or gives the owner written notice about the amount of the additional tax, interest, and, if required, penalty due and the date on which the total amount must be paid.

(g) The total amount is due and payable to the treasurer thirty days after the owner is notified of the amount of additional tax, interest, and penalty due.

(3) **Amount of additional tax, interest, and penalty.** The amount of additional tax, interest, and penalty will be determined as follows:

(a) The amount of additional tax is equal to the difference between the property tax paid on the land because of its classified status and the property tax that would have been paid on the land based on its true and fair value for the seven tax years preceding the withdrawal or removal. And in the case of a removal, the taxes owed for the balance of the current tax year;

(b) The amount of interest, calculated at the same statutory rate charged on delinquent property taxes specified in RCW 84.56.020, is based upon the amount of additional tax determined under (a) of this subsection, starting from the date the additional tax could have been paid without interest until the date the tax is paid; and

(c) A penalty amounting to twenty percent of the additional tax and interest; that is, twenty percent of the total amount computed in (a) and (b) of this subsection. A penalty is not imposed when:

(i) The land has been classified for at least ten years at the time it is withdrawn from classification and the owner submitted a request to withdraw classification to the assessor at least two assessment years prior to the date the land is withdrawn from classification; or

(ii) The use of the land has changed and the change in use was the result of one of the circumstances listed in RCW 84.34.108(6). See subsection (5) of this ~~((rule for a detailed list of these circumstances))~~ section.

(4) **Failure to sign notice of continuance.** Land will be removed from current use classification if a new owner fails to sign the notice of continuance when the classified land is sold or transferred. Additional tax, interest, and penalty will be imposed in accordance with RCW 84.34.108(4) because of this removal. A notice of continuance is not required when classified land is transferred to a new owner who is the heir or devisee of a deceased owner and the new owner wishes to continue classified use (see RCW 84.34.108 (1)(c)). If the heir or devisee elects not to continue classified use, the land will be removed from classification and additional tax, interest, and penalty are due.

(5) **Exceptions.** No additional tax, interest, or penalty will be imposed if the withdrawal or removal from classification ~~((was the result of one or more))~~ resulted solely from any of the following ((circumstances)):

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain or the sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power. This entity must have declared its intent to exercise the power of eminent domain in writing or by some other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than an act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city in which the land is located disallowing the current use of classified land. For the purposes of this ~~((rule))~~ section, "official action" includes: City ordinances, zoning restrictions, Growth Management Act, Shoreline Management Act, and Environmental Policy Act;

(e) Transfer of land to a church when the land would qualify for a property tax exemption under RCW 84.36.020. Only the land that would qualify for exemption under RCW 84.36.020 is included within this exception. Additional tax, interest, and, if appropriate, the penalty will be assessed upon the remainder of the land withdrawn or removed from classification;

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the conservation purposes specified therein. See subsection (6) of this ~~((rule))~~ section for a listing of these agencies, organizations, and purposes. However, when the property interests are no longer used for one of the purposes enumerated in RCW 84.34.210 or 64.04.130, additional tax, interest, and penalty will be imposed on the owner of the property at that time;

(g) Removal of land granted classification as farm and agricultural land under RCW 84.34.020 (2)~~((+))~~ (f) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it. This exception applies only to the land upon which the housing is located even if this portion of the agricultural enterprise has not been allocated a separate parcel number for assessment and tax purposes;

(h) Removal of classification after a statutory exemption is enacted that would exempt the land from property tax and the landowner submits a written request to the assessor to remove the land from classification. This exception applies only to newly enacted exemptions that would cause classified land to go from taxable to exempt status. For example, in 1999 the legislature created a new property tax exemption for property used for agricultural research and education programs. ~~((Subsequently,))~~ If the owner of such land subsequently requests removal of the land from classification, no additional tax, interest or penalty are imposed because of this new property tax exemption authorized by RCW 84.36.-570(-);

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a ~~((fee interest or a))~~ conservation easement ((for the riparian open space program)) of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years of the death of an owner who held at least a fifty percent interest in the land if:

(i) The individual(s) or entity(ies) who received the land from the deceased owner is selling or transferring the land; and

(ii) The land has been continuously assessed and valued as ~~((classified or))~~ designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The

date of death shown on the death certificate begins the two-year period for sale or transfer; ~~((¶))~~

(l) The assessor discovers that the land was classified under chapter 84.34 RCW in error through no fault of the owner:

(i) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for classification or the failure of the assessor to remove the land from classification;

(ii) This exception does not apply if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification; or

(m) The result of one of the following changes in classification because of the owner's request for:

(i) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(ii) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(iii) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(iv) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1).

**(6) Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130.** If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, interest, or penalty will be imposed as long as the property is used for one of these purposes:

- (a) State agency;
- (b) Federal agency;
- (c) County;
- (d) City;
- (e) Town;
- (f) Metropolitan park district (see RCW 35.61.010);
- (g) Metropolitan municipal corporation (see RCW 35.58.020);

(h) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

**(7) Removal of classification from land that was previously ~~((classified or))~~ designated forest land under chapter 84.33 RCW.** Land that was previously ~~((classified or))~~ designated as forest land under chapter 84.33 RCW may be reclassified under chapter 84.34 RCW at the ~~((request of the land owner))~~ owner's request made no later than thirty days after removal of the land from designation. If such land is subsequently removed from the current use program before the land has been classified under chapter 84.34 RCW for at

least ten assessment years, a combination of compensating tax imposed under chapter 84.33 RCW and additional tax, interest, and penalty imposed under chapter 84.34 RCW is due. RCW 84.33.145 explains the way in which these taxes are to be calculated.

AMENDATORY SECTION (Amending WSR 07-21-097, filed 10/18/07, effective 11/18/07)

**WAC 458-30-700 Designated forest land—Removal—Change in status—Compensating tax. (1) Introduction.** This ~~((rule))~~ section describes what events trigger the removal of land from designated forest land status under chapter 84.33 RCW, the procedures followed for removal, and the resulting compensating tax.

**(2) Events triggering the removal of designated forest land status.** The assessor must remove forest land from its designated forest land status when:

(a) The owner submits a written request to remove the owner's land from designated forest land status;

(b) The owner sells or transfers the land to an individual or entity exempt from property tax because of that individual's or entity's ownership;

(c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber;

(d) The owner has failed to comply with a final administrative or judicial order made because of the violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or the rules that implement Title 76 RCW;

(e) Restocking has not occurred to the extent or within the time specified in the application for designation of the land; ~~((¶))~~

(f) The owner sells or transfers forest land to a new owner who has not signed a notice of continuance, except when the new owner is the heir or devisee of a deceased owner. RCW 84.33.140(5); or

(g) The assessor discovers that the land was designated under chapter 84.33 RCW in error.

**(3) How to retain designated forest land status when the land is sold or transferred.** When designated forest land is sold or transferred, the new owner may retain designated forest land status by filing a signed notice of continuance with the deed. The notice of continuance may be signed as part of the real estate excise tax (REET) affidavit or as a separate form if the county has decided it will require owners to submit both the REET affidavit and an attached separate notice of continuance. If multiple owners own the land, all owners or their agent(s) must sign the notice of continuance. A notice of continuance is not required for a new owner to retain designated forest land status when the new owner inherits the property.

(a) The owner may obtain the notice of continuance form and a real estate excise tax (REET) affidavit from the county. The county assessor's office has the notice of continuance form and the county treasurer's office has the REET affidavit.

The notice of continuance may also be obtained on the internet at <http://dor.wa.gov> under property tax, "forms."



(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

(i) The assessor signs the REET affidavit and indicates whether the land will or will not qualify to continue as designated forest land.

(ii) An assessor signs the REET affidavit and approves the land for continued classification if:

(A) The owner provides a complete and accurate notice of continuance signed by the new owner demonstrating that the forest land will continue to qualify as designated forest land; and

(B) At the assessor's option, the new owner provides a timber management plan for the property.

(iii) The assessor is allowed up to fifteen days to confirm that the information upon the notice is complete and accurate. The assessor may use this time to confirm that the timber management plan provides:

(A) The correct legal description for the forest land;

(B) The new owner's statement that the forest land is owned by the same person, consists of twenty or more contiguous acres, and is primarily devoted to and used to grow and harvest timber;

(C) A statement about whether the land is used to graze livestock;

(D) A brief description of the timber stands located on the land;

(E) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(F) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

A timber management plan may contain, but is not required to contain, any other information that the harvester needs for its own business purposes (i.e., a statement of goals for managing the land or identifying resource protection areas on the land (like riparian buffer areas along a stream or an unstable slope) that limit harvesting activities).

(iv) If the assessor determines that the notice of continuance or the timber management plan is not accurate or complete, the owner may resubmit the corrected information to the assessor.

(v) If the assessor determines that the land does not qualify to continue as designated forest land, the assessor removes the land upon the date of the conveyance and provides the owner with a notice of removal containing reason(s) for the removal and the amount of compensating taxes owed.

(c) Once the assessor signs the notice of continuance as part of the REET affidavit and the separate notice of continuance, if required, the notice(s) are then submitted to the treasurer. Before the treasurer can stamp the REET affidavit as approved for recording, the treasurer collects any REET due because of the transfer, and collects all compensating tax if the land does not qualify for continuance as designated forest

land because it was denied continuance by the assessor. The county recording clerk must not accept any deeds or other transfer documents unless the treasurer has stamped the REET affidavit.

(d) A notice of continuance is not required when the transfer of the forest land is to a new owner who is an heir or devisee, however, the new owner must continue to meet the requirements of designated forest land to avoid removal from designation. The treasurer determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when forest land has been transferred by inheritance without a notice of continuance.

(4) **Assessor decisions and procedures.** Before removing the land from its designated forest land status, the assessor follows certain procedures and takes into account circumstances that may delay or prevent removal.

(a) The assessor must determine:

(i) The actual area of land to be removed from forest land status;

(ii) Whether the land has been exempted from an unretired special benefit assessment;

(iii) The true and fair value of the area being removed as of January 1st of the year of removal from designation;

(iv) Forest land value for the area to be removed;

(v) The last levy rate that applied for that area; and

(vi) The amount of time the land has been designated ~~(and classified)~~ as forest land, including the number of days up to the date of removal for the current year of removal.

(b) The assessor may require the owner to provide a legal description of the land area intended for removal when the landowner requests removal of owner's land from designated forest land status.

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains twenty or more contiguous acres primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet the forest land definition because there are less than twenty contiguous acres primarily devoted to and used for growing and harvesting timber, the owner may request reclassification as timber land under the open space program in chapter 84.34 RCW.

(d) The assessor must provide the owner with a written notice and an opportunity to be heard by the assessor, or the assessor's deputy, when the assessor intends to remove the land because it is no longer primarily devoted to and used for growing and harvesting timber. RCW 84.33.140 (5)(d). Each county assessor may set his or her own procedure for giving a landowner this notice and opportunity to be heard so long as it is done in a reasonable and consistent manner that ensures due process for each owner.

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if contiguous parcels of the subdivided land still add up to at least twenty contiguous acres, remain in the same ownership, and continue to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the

owner subdivides a tract of designated forest land into separate parcels.

(f) If the assessor determines the land is no longer primarily devoted to and used for growing and harvesting timber, but there is a pending acquisition by an entity that would qualify for exemption from compensating tax under subsection (6)(e) of this ~~((rule))~~ section, the assessor must not remove the land from its designated forest land status. RCW 84.33.140 (5)(d)(i). In order to prevent removal, the government entity or other qualified recipient must provide written proof to the assessor of its intent to acquire the land or documentation that demonstrates the transaction will qualify for an exemption from compensating tax under subsection (6)(e) of this ~~((rule))~~ section. The entity acquiring the land must provide this written proof within sixty days of a request by the assessor. Thereafter, once a year, the governmental entity or other recipient must provide the assessor of the county in which the land is located written evidence of its intent to acquire the land. This written evidence must be provided on or before December 31st of each year or at an earlier date if the assessor makes a written request for such information. RCW 84.33.140 (5)(d)(i). Upon the assessor's written request, the information must be provided within sixty days from the date the assessor mails or hands the request to the owner or the postmark date of the request, if later.

(g) The assessor must not remove forest land from its designation if a governmental restriction is imposed on the land that prohibits, in whole or in part, the harvesting of timber.

(i) If only a portion of the forest land is impacted by the governmental restriction, the assessor cannot use the restriction as a basis to remove the remainder of the land from its designated forest land status.

(ii) A governmental restriction includes:

(A) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or

(B) The land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(5) **Removal proceedings.** After determining that a triggering event causing removal has occurred, the assessor must provide timely written notice(s) to the taxpayer. RCW 84.33.-140 (5)(d) (written notice and opportunity to be heard), RCW 84.33.140(9) (notice of removal). Upon receiving the notice of removal, the landowner may appeal the removal and/or apply for reclassification of the land to the open space program under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days of the postmark date for the notice or by July 1st of the year of removal, whichever is later. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

(a) **When does the land get removed from the designated forest land status?** If the removal is a result of a sale or transfer, the assessor removes the land on the date of sale or transfer provided in the legal conveyance. If the removal is based upon a determination or discovery made about the land by the assessor or at the request of the owner, the assessor removes the land on the date shown on the notice of removal mailed to the owner.

(b) **Notice of removal.** The assessor uses the notice of removal to notify the owner that the land has been removed from designated forest land status. Within thirty days of removing land from designated forest land status, the assessor must mail a notice of removal to the owner with the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(i) If the property is being removed because the assessor has determined the land is no longer primarily devoted to and used for growing and harvesting timber, the assessor provides two notices. First, the assessor must notify the taxpayer of his or her intent to remove the property and give the owner an opportunity to be heard. The assessor may require the owner to provide pertinent information about the land and its use in the response to the assessor's first notice. When the assessor determines that the property still does not qualify as designated forest land after the first notice is sent, the assessor mails the owner the second notice, the notice of removal, but only after:

(A) The owner declines the opportunity to be heard;

(B) The owner fails to timely respond to the first notice; or

(C) The assessor has received and considered the owner's timely response to the notice of intent to remove and nevertheless concludes that the property is no longer primarily devoted to growing and harvesting timber.

(ii) If the removal is based upon an owner's request for removal, upon receipt of a request for removal from an owner, the assessor sends the notice of removal to the owner showing the compensating tax and recording fee due.

(iii) The notice provides the reason(s) for removing the land from designation and the date of the removal. RCW 84.33.140(9). The notice includes the compensating tax calculated in ~~((rule-section))~~ subsection (6) of this section and the necessary recording fees to be paid. It also includes the due date for payment, along with the landowner's rights to appeal the removal or the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form prepared by the department.

(iv) The assessor must also provide written notice of the removal to any local government filing a notice regarding a special benefit assessment under RCW 84.33.210 within a reasonable time after the assessor's decision to remove the land. The assessor may provide a simple statement with the legal description of the land, the name of the landowner, and the date of removal, if he or she includes a copy of the notice sent to the landowner. RCW 84.33.230.

(c) **What happens when an owner chooses to appeal the removal?** Unless the removal is reversed upon appeal, the assessor continues the process to remove the property from designated forest land status. The assessor may choose to delay collection of the compensating tax and recording fee until the appeal is decided. However, if the assessor postpones the collection of the compensating tax and recording fee, the assessor must notify the treasurer to temporarily delay collection. The assessor must also notify the owner that if the determination to remove is upheld, then interest will be due from the date the compensating tax and recording fee were due.

(i) If the removal is reversed upon appeal, the assessor shall reinstate the land as designated forest land, discharge any lien placed against the land, revise any assessments made against the property during the interim, refund the recording fee paid, and refund or cancel any compensating taxes and interest paid or owing.

(ii) If the removal is upheld upon an appeal in which the assessor has delayed collection, the compensating tax and recording fee are due immediately with interest accrued from the date the tax and fee were originally due. Upon receiving notice of the decision upholding the removal, the assessor must immediately notify the treasurer to collect any unpaid compensating taxes, fees, and interest on the land.

**(d) What happens when an owner applies to have the land reclassified under chapter 84.34 RCW?** If an application for reclassification is submitted by the owner (~~(within)~~ no later than thirty days after the notice of removal (~~(has been)~~ was mailed, the forest land is not removed from classification until the application for reclassification under chapter 84.34 RCW is denied or later removed from classification under RCW 84.34.108. RCW 84.33.145(1).

(i) (~~The assessor processes~~) An application for reclassification is processed in the same manner as (~~it processes~~) an initial application for classification under chapter 84.34 RCW.

(ii) A timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification under this chapter or from designated (~~forestland~~) forest land under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(A) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(B) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the county legislative authority may delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(ii) When the owner sells or transfers land (or a portion of the land) while an application for reclassification is pending, an assessor may accept a notice of continuation, and allow the owner to revise the application for reclassification to reflect the name of the new owner of the property.

(iv) If the application for reclassification under chapter 84.34 RCW is approved, the assessor shall transfer the property to its new classification.

(v) If the application for reclassification under chapter 84.34 RCW is denied, the assessor must record the removal notice and inform the treasurer's office to immediately begin collection of the compensating tax and the recording fee.

**(6) Compensating tax.** Compensating tax is imposed when land is removed from its designated forest land status. This tax recaptures taxes that would have been paid on the land if it had been assessed and taxed at its true and fair value instead of the forest land value.

(a) **Calculating the compensating tax.** The assessor uses the current year's levy rate, the forest land value, and the true and fair value for the area to be removed from forest land status to calculate the compensating tax. The compensating tax consists of two parts: The recapture of taxes for previous years that the land was (~~classified or~~) designated as forest land, up to a maximum of nine years; and the recapture of taxes for the portion of the current year up to the date of removal in the year the land is removed from designation. RCW 84.33.140(11).

(i) The compensating tax for the previous years is calculated by determining the difference between the amount of taxes assessed at the forest land value for the removal area and the amount of taxes that would have been paid if the land had been valued at its true and fair value in the year of removal. That difference is multiplied by the number of years the land was (~~classified or~~) designated as forest land up to a maximum of nine years.

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated by determining the difference between the amount of taxes assessed at the forest land value and the taxes that would have been paid if the land had been valued at its true and fair value for the portion of the year up to the removal date.

**(b) Formulas for calculating taxes after removal:**

(i) Calculation of prior year's compensating tax:

True and Fair Value of Land (Jan 1st of year removed)	Less	Forest Land Value at time of removal	Multiplied by	Last levy Rate Extended Against Land	Multiplied by	Years (not to exceed 9)	Equals	Compensating Tax
\$ _____	-	\$ _____	x	\$ _____	x		=	\$ _____

(ii) Calculation of current year's taxes to date of removal:

$$\begin{array}{r}
 \frac{\text{No. of days designated as forest land}}{\text{No. of days in year}} \div \frac{365}{\text{Levy rate}} = \frac{\text{Proration factor (To items (A) and (B))}}{\text{Proration factor}} \\
 \text{(A) } \$ \frac{\text{Market value}}{\text{Levy rate}} \times \frac{365}{\text{Proration factor}} = \$ \text{_____}
 \end{array}$$

$$\begin{array}{rclclcl}
 \text{(B)} & \$ & \underline{\hspace{2cm}} & \times & \underline{\hspace{2cm}} & \times & \underline{\hspace{2cm}} & = & \$ \underline{\hspace{2cm}} \\
 & & \text{Forest land value} & & \text{Levy rate} & & \text{Proration factor} & & \\
 \text{(C)} & \text{Amount of compensating tax for current year ((A) minus (B))} & & & & & & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

(c) **The assessor notifies the treasurer of the amount of compensating tax and the due date for the tax by providing the treasurer a copy of the removal notice.** Compensating tax is due and payable to the county treasurer thirty days after the assessor mails to the owner the notice of removal informing the owner of the reasons for removal and the amount of compensating tax due. RCW 84.33.140(11). However, when property is sold or transferred, any compensating tax owed must be paid to the county treasurer before recording the conveyance. The county recording authority will not accept any instrument transferring the land, unless the compensating tax was paid or was not owed.

(d) **What happens if the compensating tax is not paid on the due date?** If the compensating tax is not paid by the due date, the tax is considered delinquent. Interest, set at the statutory rate for delinquent property taxes specified in RCW 84.56.020, will accrue against the amount of the outstanding taxes from the due date until the entire amount owing is paid. Unpaid compensating tax and interest becomes a lien on the land. RCW 84.60.020.

(i) This lien attaches at the time the forest land is removed from designation.

(ii) The lien has priority over any recognizance, mortgage, judgment, debt, obligation, or responsibility against the land.

(iii) This lien must be fully paid before any other recognizance, mortgage, judgment, debt, obligation, or responsibility may be charged against the land.

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

(e) **Compensating tax is not imposed on land removed from the forest land designation if the removal resulted solely from any of the following:**

(i) A transfer to a government entity in exchange for other forest land within Washington state;

(ii) A transfer under either the power of eminent domain or upon the threat of eminent domain by an entity with the power of eminent domain that intends to exercise this power. The entity must threaten to exercise eminent domain in writing or demonstrate this threat by some other official action;

(iii) A donation of fee title, development rights, or the right to harvest timber in order to protect, preserve, maintain, improve, restore, limit the future use, or conserve the property for public use or enjoyment (see RCW 84.34.210 and 64.04.130). Provided, this donation is made to a:

- (A) State agency;
- (B) Federal agency;
- (C) County;
- (D) City;
- (E) Town;
- (F) Metropolitan park district (see RCW 35.61.010);
- (G) Metropolitan municipal corporation (see RCW 35.58.020);

(H) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

However, when the land is no longer being used for one of the purposes listed above, compensating tax will be imposed on the owner of the land at that time;

(iv) The sale or transfer of fee title to a government entity (see the governmental entities listed ~~((above))~~ ~~((clause (iii) of this rule))~~ subsection (6)(e)(iii) of this section) or a nonprofit nature conservancy corporation as defined in RCW 64.04.130 exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage advisory council under its established natural heritage plan as defined in chapter 79.70 RCW (natural area preserves). However, if the land is no longer used to protect and conserve the area for state natural area preserve purposes, or fails to comply with the terms of a natural heritage plan, compensating tax will be imposed on the owner of the land at that time;

(v) A sale or transfer of fee title to the state's parks and recreations commission for park and recreation purposes;

(vi) An official action of an agency of the state of Washington or the county or city in which the land is located disallowing the current use of the land. "Official action" includes city ordinances, zoning restrictions, the Growth Management Act, the Shoreline Management Act, and the Environmental Policy Act;

(vii) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(viii) The creation, sale, or transfer of a ~~((fee interest or a))~~ conservation easement ((for the riparian open space program)) of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(ix) In a county with a population of more than ~~((one million (i.e., King County)))~~ six hundred thousand, a transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation (as these corporations are defined in RCW 64.04.130) and the property interest being transferred is to:

(A) Protect or enhance public resources; or

(B) Preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment. When the land is no longer being used for any of these purposes, the owner of the land at the time will be required to pay compensating tax. RCW 84.33.140 (12) and (13); ~~((or))~~

(x) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as ~~((classified or))~~ designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The

date of death shown on the death certificate begins the two-year period for sale or transfer; or

(xi) The assessor discovers that the land was designated under chapter 84.33 RCW in error through no fault of the owner;

(A) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for designation or the failure of the assessor to remove the land from designation;

(B) This exception does not apply if an independent basis for removal exists. An example of an independent basis for removal includes the land is no longer devoted to and used for the growing and harvesting of timber.

**(7) When will the land be assessed at its true and fair value and the taxes become payable?** The land will be

assessed at its true and fair value on the date it is removed from forest land status. The assessor revalues the land removed from designated forest land status with reference to its true and fair value on January 1st in the year of removal. RCW 84.33.140(10). The property tax for the remainder of the year following the date of removal is based on land's true and fair value.

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due date as all other property taxes are due for the year (generally, April 30th and October 1st of the current year. See RCW 84.56.020).

(b) Formula for calculating the increase in property taxes for the remainder of the year in which the land is being removed:

	÷	365	=	
(i) _____ No. of days from date of removal to the end of the year		_____		_____
		No. of days in year		Proration factor for true and fair land value
(ii) \$ _____	x	_____	=	\$ _____
Market value		Levy rate		Proration factor
(iii) \$ _____	x	_____	=	\$ _____
Forest land value		Levy rate		Proration factor
(iv) <b>Total amount of increased taxes for current year ((ii) minus (iii))</b>			=	\$ _____

(c) If the taxes for the year of removal have not yet been billed, the tax should be recalculated based on the true and fair value of the land removed for the portion of the year following the date of removal.

(d) An owner may appeal the true and fair value of the land used to calculate the increase in the remaining current year's taxes or the compensating taxes within thirty days of the notice (or up to sixty days if such time limit has been adopted by the county legislative authority) or on or before July 1st, whichever is later. RCW 84.40.038.

**(8) What happens when forest land reclassified under chapter 84.34 RCW is later removed from that classification before ten years have passed?** If reclassified forest land is later removed, a combination of compensating tax and additional tax will be imposed unless the basis for removal is one of the circumstances listed as exempt from additional tax under RCW 84.34.108(6).

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as designated forest land and an amount equal to the new true and fair value of the land when removed from classification under RCW 84.34.108 multiplied by the dollar rate of the last property tax levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was (~~classified or~~) designated as forest land under chapter 84.33 RCW, if the total number of years the land was (~~classified or~~) designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was (~~classified or~~) designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is at least ten.

**WSR 09-19-012**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed September 3, 2009, 11:35 a.m., effective October 4, 2009]

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

Purpose: Legislation passed in 2007 established certain safety requirements for mental health professionals who conduct home visits to stabilize persons in crisis. The purpose of this rule-making action is to codify those requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0405, 388-865-0452, 388-865-0456, 388-865-0466, and 388-865-0468.

Statutory Authority for Adoption: RCW 71.05.560, 71.-05.700, 71.05.705, 71.05.710, 71.05.715, 71.05.720, and 71.-24.035.

Adopted under notice filed as WSR 09-15-083 on July 13 [14], 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 5, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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 5, Repealed 0.

Date Adopted: September 1, 2009.

Don Goldsby, Manager  
Rules and Policies  
Assistance Unit

**AMENDATORY SECTION** (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0245 Administration of the Involuntary Treatment Act.** The regional support network must establish policies and procedures for administration of the involuntary treatment program, including investigation, detention, transportation, court-related, and other services required by chapters 71.05 and 71.34 RCW. This includes:

(1) Designating mental health professionals to perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 71.05 and 71.34 RCW.

(2) Documenting consumer compliance with the conditions of less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed consumer for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety and one hundred eighty-day commitments.

(b) Notifying the designated mental health professional if noncompliance with the less restrictive order impairs the individual sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that when a peace officer or designated mental health professional escorts a consumer to a facility, the designated mental health professional must take reasonable precautions to safeguard the consumer's property including:

(a) Safeguarding the consumer's property in the immediate vicinity of the point of apprehension;

(b) Safeguarding belongings not in the immediate vicinity if there may be possible danger to those belongings;

(c) Taking reasonable precautions to lock and otherwise secure the consumer's home or other property as soon as possible after the consumer's initial detention.

(4) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

**AMENDATORY SECTION** (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0275 Management information system.** The regional support network must be able to demonstrate that it collects and manages information that shows the effectiveness and cost effectiveness of mental health services. The regional support network must:

(1) Operate an information system and ensure that information about consumers who receive publicly funded mental health services is reported to the state mental health information system according to mental health division guidelines.

(2) Ensure that the information reported is:

(a) Sufficient to produce accurate regional support network reports; and

(b) Adequate to locate case managers in the event that a consumer requires treatment by a service provider that would not normally have access to treatment information about the consumer.

(3) Ensure that information about consumers is shared or released between service providers only in compliance with state statutes (see chapters 70.02, 71.05, and 71.34 RCW) and this chapter. Information about consumers and their individualized crisis plans must ~~((be available))~~:

(a) Be available twenty-four hours a day, seven days a week to designated mental health professionals and inpatient evaluation and treatment facilities, as consistent with confidentiality statutes; ~~((and))~~

(b) Be available to the state and regional support network staff as required for management information and program review; and

(c) Comply with the requirements of RCW 71.05.715.

(4) Maintain on file a statement signed by regional support network, county or service provider staff having access to the mental health information systems acknowledging that they understand the rules on confidentiality and will follow the rules.

(5) Take appropriate action if a subcontractor or regional support network employee willfully releases confidential information, as required by chapter 71.05 RCW.

**AMENDATORY SECTION** (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0405 Competency requirements for staff.** The licensed service provider must ensure that staff are qualified for the position they hold and have the education, experience, or skills to perform the job requirements. The provider must maintain documentation that:

(1) All staff have a current Washington state department of health license or certificate or registration as may be required for their position;

(2) Washington state patrol background checks are conducted for employees in contact with consumers consistent with RCW 43.43.830;

(3) Mental health services are provided by a mental health professional, or under the clinical supervision of a mental health professional;

(4) Staff performing mental health services (not including crisis telephone) must have access to consultation with a psychiatrist or a physician with at least one year's experience in the direct treatment of persons who have a mental or emotional disorder;

(5) Mental health services to children, older adults, ethnic minorities or persons with disabilities must be provided by, under the supervision of, or with consultation from the appropriate mental health specialist(s) when the consumer:

(a) Is a child as defined in WAC ~~((866-865-0150 [388-865-0150]))~~ 388-865-0150;

(b) Is or becomes an older person as defined in WAC 388-865-0150;

(c) Is a member of a racial/ethnic group as defined in WAC ~~((866-865-0105))~~ 388-865-0105 and as reported:

(i) In the consumer's demographic data; or

(ii) By the consumer or others who provide active support to the consumer; or

(iii) Through other means.

(d) Is disabled as defined in WAC 388-865-0150 and as reported:

(i) In the consumer's demographic data; or

(ii) By the consumer or others who provide active support to the consumer; or

(iii) Through other means.

(6) Staff receive regular supervision and an annual performance evaluation; and

(7) An individualized annual training plan must be implemented for each direct service staff person and supervisor ~~((it))~~, to include at a minimum:

(a) The skills he or she needs for his/her job description and the population served; and

(b) The requirements of RCW 71.05.720.

**AMENDATORY SECTION** (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0440 Availability of consumer information.** (1) Consumer individualized crisis plans as provided by the consumer must be available twenty-four hours a day, seven days a week to ~~((designated mental health professionals, crisis teams, and voluntary and involuntary inpatient evaluation and treatment facilities))~~ the following, as consistent with confidentiality statutes~~((:))~~ and without unduly delaying a crisis response:

(a) Designated mental health professionals;

(b) Crisis teams; and

(c) Voluntary and involuntary inpatient evaluation and treatment facilities.

(2) Consumer information must be available to the state and regional support network staff as required for management information, quality management and program review.

**AMENDATORY SECTION** (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0452 Emergency crisis intervention services—Additional standards.** The community support service provider that is licensed for emergency crisis intervention services must assure that required general minimum

standards for community support services are met, plus the additional minimum requirements:

(1) Availability of staff to respond to crises twenty-four hours a day, seven days a week, including:

(a) Bringing services to the person in crisis when clinically indicated;

(b) Requiring that staff remain with the consumer in crisis to stabilize and support him/her until the crisis is resolved or a referral to another service is accomplished;

(c) Resolving the crisis in the least restrictive manner possible;

(d) A process to include family members, significant others, and other relevant treatment providers as necessary to provide support to the person in crisis~~((; and))~~.

~~((=))~~ (2) Written procedures for managing assaultive and/or self-injurious patient behavior.

~~((=))~~ (3) Written procedures for visits to homes and other private locations in accordance with the requirements of RCW 71.05.700 through 71.05.715.

(4) Crisis telephone screening;

~~((=))~~ (5) Mobile outreach and stabilization services with trained staff available to provide in-home or in-community stabilization services, including flexible supports to the person where he/she lives.

~~((=))~~ (6) Provide access to necessary services including:

(a) Medical services, which means at least emergency services, preliminary screening for organic disorders, prescription services, and medication administration;

(b) Interpretive services to enable staff to communicate with consumers who have limited ability to communicate in English, or have sensory disabilities;

(c) Mental health specialists for children, elderly, ethnic minorities or consumers who are deaf or developmentally disabled;

(d) Voluntary and involuntary inpatient evaluation and treatment services, including a written protocol to assure that consumers who require involuntary inpatient services are transported in a safe and timely manner;

(e) Investigation and detention to involuntary services under chapter 71.05 RCW for adults and chapter 71.34 RCW for children who are thirteen years of age or older, including written protocols for contacting the designated mental health professional.

~~((=))~~ (7) Document all telephone and face-to-face crisis response contacts, including:

(a) Source of referral;

(b) Nature of crisis;

(c) Time elapsed from the initial contact to face-to-face response; and

(d) Outcomes, including basis for decision not to respond in person, follow-up contacts made, and referrals made.

~~((=))~~ (8) The provider must have a written protocol for referring consumers to a voluntary or involuntary inpatient evaluation and treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated mental health professional and transporting consumers.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0456 Case management services—Additional standards.** The community support service provider for case management services must assure that all general minimum standards for community support services and are met, plus the following additional minimum requirements:

- (1) Assist consumers to achieve the goals stated in their individualized service plan;
- (2) Support consumer employment, education or participation in other daily activities appropriate to their age and culture;
- (3) Make referrals to other needed services and supports, including treatment for co-occurring disorders and health care;
- (4) Assist consumers to resolve crises in least-restrictive settings;
- (5) Provide information and education about the consumer's illness so the consumer and family and natural supports are engaged to help consumers manage the consumer's symptoms;
- (6) Include, as necessary, flexible application of funds, such as rent subsidies, rent deposits, and in-home care to enable stable community living; and
- (7) Maintain written procedures for home visits in accordance with the requirements of RCW 71.05.700 through 71.05.715.

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

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0466 Community support outpatient certification—Additional standards.** In order to provide services to consumers on a less restrictive alternative court order, providers must be licensed to provide the psychiatric and medical service component of community support services and be certified by the mental health division to provide involuntary treatment services consistent with WAC 388-865-0484. In addition, the provider must:

- (1) Document in the consumer clinical record and otherwise ensure:
  - (a) Detained and committed consumers are advised of their rights under chapter 71.05 or 71.34 RCW and as follows:
    - (i) To receive adequate care and individualized treatment;
    - (ii) To make an informed decision regarding the use of antipsychotic medication and to refuse medication beginning twenty-four hours before any court proceeding that the consumer has the right to attend;
    - (iii) To maintain the right to be presumed competent and not lose any civil rights as a consequence of receiving evaluation and treatment for a mental disorder;
    - (iv) Of access to attorneys, courts, and other legal redress;

(v) To have the right to be told statements the consumer makes may be used in the involuntary proceedings; and

(vi) To have the right to have all information and records compiled, obtained, or maintained in the course of treatment kept confidential as defined in chapters 71.05 and 71.34 RCW.

(b) A copy of the less restrictive alternative court order and any subsequent modifications are included in the clinical record;

(c) Development and implementation of an individual service plan which addresses the conditions of the less restrictive alternative court order and a plan for transition to voluntary treatment;

(d) That the consumer receives psychiatric treatment including medication management for the assessment and prescription of psychotropic medications appropriate to the needs of the consumer. Such services must be provided:

- (i) At least weekly during the fourteen-day period;
- (ii) Monthly during the ninety-day and one-hundred eighty day periods of involuntary treatment unless the attending physician determines another schedule is more appropriate, and they record the new schedule and the reasons for it in the consumer's clinical record.

(2) Maintain written procedures for managing assaultive and/or self-destructive patient behavior, and provide training to staff in these interventions;

(3) Have a written protocol for referring consumers to an inpatient evaluation and treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis;

(4) For consumers who require involuntary detention the protocol must also include procedures for:

(a) Contacting the designated mental health professional regarding revocations and extension of less restrictive alternatives, and

(b) Transporting consumers.

(5) Maintain written procedures for home visits in accordance with the requirements of RCW 71.05.700 through 71.05.715

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0468 Emergency crisis intervention services certification—Additional standards.** In order to provide emergency services to a consumer who may need to be detained or who has been detained, the service provider must be licensed for emergency crisis intervention services and be certified by the mental health division to provide involuntary treatment services consistent with WAC 388-865-0484. In addition, the provider must:

(1) Be available seven-days-a-week, twenty-four-hours-per-day;

(2) Follow a written protocol for holding a consumer and contacting the designated mental health professional;

(3) Provide or have access to necessary medical services;

(4) Have a written agreement with a certified inpatient evaluation and treatment facility for admission on a seven day a week, twenty-four hour per day basis; ~~(and)~~

(5) Follow a written protocol for transporting individuals to inpatient evaluation and treatment facilities; and



(6) Maintain written procedures for home visits in accordance with the requirements of RCW 71.05.700 through 71.05.715.

**WSR 09-19-013**

**PERMANENT RULES**

**DEPARTMENT OF ECOLOGY**

[Order 04-13—Filed September 3, 2009, 11:51 a.m., effective October 4, 2009]

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

Purpose: The purpose of this rule is to establish a state-wide certification process for wetland mitigation banks, as specified by state lawmakers with the adoption of chapter 90.84 RCW, Wetlands mitigation banking; and to ensure that these banks are ecologically sustainable and provide adequate compensation for unavoidable impacts to wetlands. Ecology believes that wetland mitigation banks provide a good option to mitigate wetland losses. Some of the many benefits of banking include:

- Reducing the time lag between the lost or reduced functions and values from a wetland impact project and the compensation for those impacts (temporal loss).
- Ensuring that sites are planned to be consistent with local watershed planning efforts.
- Combining mitigation needs of small projects into one larger wetland complex.
- Providing mechanisms for long-term protection, management, and maintenance.

Statutory Authority for Adoption: Chapter 90.84 RCW. Adopted under notice filed as WSR 09-06-086 on March 3, 2009.

Changes Other than Editing from Proposed to Adopted Version: Ecology made changes to the rule language simply to:

1. Clarify definitions;
2. Clarify sentences to ensure reader understanding; and
3. Ensure rule language is consistent with local, state, and federal rules, regulations and policies.

The rationale for the rule language changes are denoted within the concise explanatory statement. If you would like to receive a copy of the concise explanatory statements you may contact Yolanda Holder, P.O. Box 47600, Olympia, WA 98504-7600 or you may view the document at <http://www.ecy.wa.gov/laws-rules/activity/wac173700.html>.

A final cost-benefit analysis is available by contacting Yolanda Holder, Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7186, fax (360) 407-6902, e-mail [yhol461@ecy.wa.gov](mailto:yhol461@ecy.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 72, 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 72, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 72, Amended 0, Repealed 0; Pilot Rule Making: New 72, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 3, 2009.

Jay J. Manning  
Director

**Chapter 173-700 WAC**

**WETLAND MITIGATION BANKS**

**PART I  
OVERVIEW**

NEW SECTION

**WAC 173-700-100 Background and purpose.** (1) The Wetlands Mitigation Banking Act, chapter 90.84 RCW, identifies wetland mitigation banking (banks) as an important regulatory tool for providing compensatory mitigation for unavoidable impacts to wetlands and declares it the policy of the state to support banking. The act directs the department of ecology (department) to adopt rules establishing a state-wide process for certifying banks.

(2) The department anticipates that banks will provide compensatory mitigation in advance of unavoidable impacts to wetlands and will consolidate compensatory mitigation into larger contiguous areas for regionally significant ecological benefits.

(3) Banks prioritize restoration of wetland functions and as such should be complementary to the restoration of ecosystems and ecosystem processes as identified in state or locally adopted science-based watershed management plans.

(4) The purpose of this chapter is to encourage banking by providing an efficient, predictable statewide framework for the certification and operation of environmentally sound banks. This chapter sets out to accomplish the following:

- (a) Provide timely review of bank proposals;
- (b) Establish coordination among state, local, tribal, and federal agencies involved in the certification of banks;
- (c) Ensure consistency with existing federal mitigation rules; and
- (d) Provide incentives to encourage bank sponsors (sponsors) to locate and design banks that provide the greatest ecological benefits.

NEW SECTION

**WAC 173-700-101 Applicability.** (1) This chapter applies to private and public banks established under chapter 90.84 RCW.

(2) All mitigation banking instruments (instruments) approved on or after the effective date of this rule, must meet the requirements of this chapter.

(3) Instruments approved prior to the effective date of this rule, are grandfathered and may continue to operate under the terms of their existing instruments;

(4) Instruments modified on or after the effective date of this rule, must be consistent with the terms of this chapter. Modifications include but are not limited to:

- (a) Addition of sites under an umbrella instrument;
- (b) Expansion of an existing site; or
- (c) Addition of a different resource currency (e.g., flood storage credits).

#### NEW SECTION

##### **WAC 173-700-102 Applicability to tribal banks.** (1)

For proposed tribal banks which are located exclusively in Indian Country, the following section applies:

(a) If the tribal bank has been approved by the U.S. Army Corps of Engineers (Corps) under existing federal rules, the bank will be deemed state certified, solely to allow the use of credits for projects under state jurisdiction, provided that:

- (i) The department was a member of the IRT for the proposed bank;
- (ii) Any concerns raised by the department, through the IRT process, have been resolved to the department's satisfaction; and
- (iii) The department has notified the Corps in writing that it concurs with their approval of the bank.

(b) The department shall determine whether to allow the use of bank credits for projects under state jurisdiction on a case-by-case basis.

(c) Certification under this section does not imply any extension of state jurisdiction or authority by the state on tribal land use activities.

(2) Proposed tribal banks which are located outside of Indian Country and partially or wholly on lands under state jurisdiction are not covered under this section and are subject to the requirements of this chapter.

#### NEW SECTION

**WAC 173-700-103 Public records.** The department must make available for public inspection:

- (1) The prospectus;
- (2) The final instrument;
- (3) Other supporting materials; and
- (4) The comments received by the department during the public notice period(s).

#### NEW SECTION

**WAC 173-700-104 Definitions. "Adaptive management activities"** means actions taken by the bank sponsor on their own to correct any deficiencies on the site in order for the site to attain the required performance standards. The adaptive management activities shall be identified in the mitigation banking instrument.

**"Agricultural lands of long-term commercial significance"** or **"ALLCS"** means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject

to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. Long-term commercial significance includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

**"Aquatic resources"** means those areas where the presence and movement of water is a dominant process affecting their development, structure, and functioning. Aquatic resources may include, but are not limited to, vegetated and nonvegetated wetlands or aquatic sites (e.g., mudflats, deep-water habitats, lakes, and streams).

**"As-built plans"** means a document which describes the physical, biological, and, if required, the chemical condition of a bank site after complete construction of each phase of an approved construction plan. As-built plans serve as a baseline from which to manage and monitor the site.

**"Available credits"** means a potential credit that has been released by the department after a bank attains the performance standards specified in the instrument.

**"Bank"** or **"wetland mitigation bank"** means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources that typically are unknown at the time of certification.

**"Bank sponsor"** or **"sponsor"** means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

**"Buffer"** means those areas on the perimeter of a bank site that enhance and protect a wetland's functions and values by maintaining adjacent habitat and reducing adverse impacts from adjacent land uses. These areas are vegetated and can reduce impacts through various physical, chemical, and/or biological processes.

**"Compensatory mitigation"** means the restoration, creation, enhancement, or in exceptional circumstances, the preservation of wetlands or other aquatic resources for the purpose of compensating for unavoidable impacts to wetlands or other aquatic resources which remain after all appropriate and practicable avoidance and minimization have been achieved.

**"Consensus"** means a process by which a group synthesizes its ideas and concerns to form a common collaborative agreement acceptable to all members.

**"Cowardin class"** means the classification of a wetland area as described in *Classification of Wetlands and Deepwater Habitats of the United States* USFWS publication FWS/OBS 79/31.

**"Creation"** means the establishment of wetland area, functions, and values in an area where none previously existed. Creation may also be known as establishment.

**"Credit"** means a unit of trade representing the increase in the ecological value of the bank site, as measured by acreage, functions, or by some other assessment method.

**"Cultural resources"** means sites, structures, buildings, districts, lands, landscapes, and objects that have historical, archaeological, and traditional cultural significance. Cultural

resources are the tangible and material evidence of the human past.

**"Days"** means calendar days.

**"Debited credit"** means:

(1) An available credit that has been withdrawn from the bank to meet regulatory requirements.

(2) A reserved credit that has been used to meet a regulatory requirement.

**"Debit project"** means those projects that use credits from a bank to fulfill regulatory requirements for compensation of impacts. These projects may require more than one regulatory approval under federal, state, and local rules.

**"Department"** means the department of ecology.

**"Enhancement"** means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**"Financial assurance"** means the money or other form of financial instrument (e.g., surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the bank are achieved and maintained over the long term.

**"Function assessment"** means an evaluation of the degree to which a wetland is performing, or is capable of performing, specific wetland functions and processes. Function assessments include the use of scientifically based quantitative and qualitative methods developed for assessing functions, as well as the use of best professional judgment.

**"Hydrogeomorphic classification"** or **"HGM class"** means a wetland classification scheme that groups wetlands based on their location in the landscape and water regime.

**"Indian Country"** means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

**"Instrument"** or **"mitigation banking instrument"** means the documentation of agency and sponsor concurrence on the objectives and administration of the bank. The mitigation banking instrument describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

**"Interagency review team"** or **"IRT"** means an interagency group of federal, state, tribal, and local regulatory and resource agency representatives who are invited to participate in negotiations with the sponsor on the terms and conditions of the instrument.

**"Local jurisdiction"** means any local government such as a town, city, or county in which the bank site is located.

**"Maintenance"** includes all activities and actions necessary to ensure the successful development of a bank.

**"Mitigation sequencing"** means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to wetlands or other aquatic resources.

**"Operational life"** or **"operational life of a bank"** means the period during which the terms and conditions of the instrument are in effect. With the exception of arrangements for the long-term management, permanent protection, and financial assurances, the operational life of a mitigation bank terminates at the point when:

(1) Available credits have been exhausted and the bank is determined to be functionally mature and self-sustaining to the degree specified in the instrument; or

(2) The sponsor voluntarily terminates the banking activity with written notice to the department.

**"Performance standards"** are measurable criteria for determining if the project goals and objectives are being achieved. Performance standards document a desired state, or amount of change necessary to indicate that a particular function is being performed or structure has been established as specified in the design.

**"Potential credit"** means a credit anticipated to be generated by the bank, but is not currently available for use.

**"Practicable"** means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**"Preservation"** means the permanent protection of ecologically important wetlands or other aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection or enhancement of the aquatic systems, or both. Preservation does not result in a gain of aquatic resource area or functions.

**"Prime farmland soils"** means land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

**"Prospectus"** is the conceptual proposal for a bank project.

**"Reestablishment"** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. Reestablishment falls under the broader term of restoration.

**"Rehabilitation"** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**"Remedial actions"** means actions required by the department to correct any deficiencies on the site in order for the site to attain the required performance standards. Remedial actions may be required by the department to gain compliance by the sponsor with this chapter.

**"Reserved credit"** means an available credit that has been withdrawn from the bank but which is not associated with a specific regulatory requirement at the time of purchase. Purchase of reserved credits does not provide any guarantee that a project will be authorized under existing regulatory programs. Reserved credits are purchased at the buyer's sole risk.

**"Restoration"** is a broad term referring to both reestablishment and rehabilitation.

**"Service area"** means the designated geographic area in which a bank can reasonably be expected to provide appropriate compensation for unavoidable impacts.

**"Signatories"** means those entities that have documented their concurrence with the terms and conditions of the instrument through their signature on the document.

**"Sustainability"** means the ability of a bank to persist in the landscape and maintain its functions in anticipation of future development needs within the watershed. Sustainable bank sites must have sufficient buffer areas to protect the site from degradations due to activities on adjacent lands.

**"Unavoidable"** means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

**"Urban areas"** means areas located within a designated urban growth area.

**"Water resource inventory areas"** or **"WRIA"** refers to Washington state's sixty-two major watershed basins as described in chapter 173-500 WAC, water resources management program established pursuant to the Water Resources Act of 1971, as amended.

**"Watershed characterization"** means an approach to identify and map areas within a watershed that are most important to support a watershed process. It identifies the degree of impairment to these areas, and identifies areas most important for protection and restoration.

**"Watershed processes"** means the dynamic physical and chemical interactions that form and maintain the landscape and ecosystems on a geographic scale of watersheds to basins (hundreds to thousands of square miles). The most important factors include the movement of water, sediment, nutrients, pathogens, toxic compounds, and wood.

**"Watershed-based approach to mitigation"** means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed

and offset losses of aquatic resource functions and services caused by authorized activities. The watershed approach may involve consideration of landscape scale, historic, and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining compensatory mitigation requirements.

**"Wetland(s)"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## PART II CERTIFICATION PROCESS

### NEW SECTION

**WAC 173-700-200 How do other laws and rules relate to banks?** (1) Banks certified under this chapter must be consistent with existing federal, state, and local laws and rules and treaty rights which relate to the establishment of a bank.

(2) Certification of a bank does not serve as authorization for other federal, state, or local permits or approvals.

(3) Interagency review team (IRT) members shall advise the sponsor of pertinent federal, state, or local rules that may apply to a specific bank proposal and that may delay the certification process.

(4) The sponsor is responsible for obtaining all required federal, state, and local permits and approvals for the construction and establishment of the bank.

(5) The sponsor is strongly encouraged to coordinate with the local jurisdiction(s) early in the development of their proposal. Each local jurisdiction has its own local permitting process and there is not a standard sequence for integrating with the bank certification process.

### NEW SECTION

**WAC 173-700-201 Decision-making procedure.** (1) All decisions made by the department must fully consider IRT, tribal, and public comments submitted to the department as part of the certification evaluation process.

(2) The department shall strive to achieve consensus with the IRT on the terms and conditions of the instrument.

(3) If the department determines that consensus cannot otherwise be reached on any term, condition, or procedural element of the instrument within a reasonable time frame, the department shall be responsible for making the final decisions.

### NEW SECTION

**WAC 173-700-210 Purpose of the prospectus.** (1) The purpose of the prospectus is to provide a conceptual plan for a bank project.

(2) The department uses the prospectus to notify the public, tribes, and the local government of the proposed bank project.

(3) The prospectus initiates dialogue between the department, sponsor, and IRT members on a proposed bank project.

(4) The department uses the prospectus and comments received during the public notice period to make an initial determination on whether there are critical issues that may affect the ability of the bank to be certified.

#### NEW SECTION

**WAC 173-700-211 Content of the prospectus.** At a minimum, the prospectus must contain information on the following elements:

- (1) The goals and objectives of the project;
- (2) Location including city or county, proximity to existing roads and other landmarks, and a vicinity map showing location of the proposed site(s);
- (3) A statement of how the bank meets any watershed restoration needs and how its design and location are ecologically appropriate;
- (4) The rationale for site selection addressing the considerations listed in WAC 173-700-303;
- (5) The general need for the proposed bank project;
- (6) General site map(s) that includes, but is not limited to:
  - (a) Total area of site;
  - (b) Location, size, and number of existing wetlands;
  - (c) Location of all streams, ponds, and other water features on or adjacent to the site;
  - (d) Location and type of all known water control features on or adjacent to the site; and
  - (e) Presence of rights of way, easements, or other encumbrances.
- (7) A description of existing conditions of the proposed site(s) including, but not limited to:
  - (a) Land ownership;
  - (b) Local land use or zoning designation;
  - (c) Current use;
  - (d) Presence of liens, rights of way, easements, or other encumbrances;
  - (e) The landscape position of the site including water resource inventory area (WRIA), basin, and subbasin location;
  - (f) Wetland types present on the site including Cowardin classification and hydrogeomorphic (HGM) class of each wetland;
  - (g) Other habitat types present;
  - (h) Available information on water sources including surface water features, preliminary ground water information, soil types, and vegetation;
  - (i) A preliminary analysis of functions provided by on-site wetlands;
  - (j) Adjacent land uses that might affect the bank's function;
  - (k) Site constraints, conflicts, or known risks that could affect bank development or function;
  - (l) Identification of all buildings, structures, and other built features that would remain on the site after construction; and
  - (m) Identification of existing mitigation sites and whether they will remain on-site after construction.

(8) Description of conceptual site design, including but not limited to:

- (a) Proposed types and approximate sizes of wetlands;
- (b) Other proposed habitat types to be provided;
- (c) Proposed functions that the bank is anticipated to provide;
- (d) Description of alterations to hydrology;
- (e) Location of grading, if applicable; and
- (f) Proposed structures (e.g., perch poles, weirs, trails, etc.).
- (9) Figures illustrating the conceptual bank design;
- (10) Proposed service area and accompanying rationale that demonstrates the service area is ecologically appropriate;
- (11) Discussion of whether water rights have been applied for or secured for the site, if needed;
- (12) Identification of proposed permanent protection mechanism, such as a conservation easement;
- (13) The proposed ownership arrangements and long-term management strategy for the bank;
- (14) Description of how the proposed bank project meets federal, state, and local laws and rules;
- (15) Identification of whether the bank site is fully or partially located on agricultural lands of long-term commercial significance;
- (16) The qualifications of the sponsor to successfully complete the proposed bank project(s), including information describing any past such activities by the sponsor; and
- (17) The qualifications of the main design team and their areas of expertise.

#### NEW SECTION

**WAC 173-700-212 Submittal of the prospectus.** (1) The sponsor must submit a complete electronic and a hard copy of the prospectus to the department.

- (2) A prospectus must contain all of the information identified in WAC 173-700-211 to be complete.
- (3) When the department receives a prospectus, it will notify affected tribes and the local jurisdiction's planning department where the bank site is located.
- (4) The department will notify the sponsor in writing within thirty days of receipt of a prospectus whether or not the document is complete.
- (5) If the department determines that the prospectus is not complete, the department shall identify any additional information necessary to complete the prospectus.
- (6) Within thirty days after the department notifies the sponsor that the prospectus is complete, it shall provide public notice of the prospectus, as specified in WAC 173-700-240 and 173-700-241.
- (7) At the beginning of the comment period, the department will ask appropriate agencies and affected tribes to provide written comments on the prospectus. The comments should address, but are not limited to:
  - (a) Any technical and ecological concerns regarding the prospectus;
  - (b) Potential conflicts with existing rules and ordinances; and
  - (c) Any critical issues that the sponsor needs to address prior to moving forward to developing the draft instrument.

(8) The department will review the comments received in response to the public notice and make a written initial evaluation. The department makes an initial evaluation on the ecological appropriateness of the proposed bank and its ability to provide appropriate compensatory mitigation for activities authorized by state or local permits. This initial evaluation letter must be provided to the sponsor within thirty days of the end of the public notice comment period.

(a) If the department determines that the proposed bank is ecologically appropriate and has potential for providing appropriate compensatory mitigation, the initial evaluation letter will inform the sponsor they may proceed with preparation of the draft instrument consistent with WAC 173-700-222.

(b) If the department determines that the proposed bank is not ecologically appropriate or does not have potential for providing appropriate compensatory mitigation, the initial evaluation letter will provide the reasons for that determination.

(i) The sponsor may revise the prospectus to address the department's concerns and submit a revised prospectus to the department.

(ii) If the sponsor submits a revised prospectus, the department may provide a revised public notice, as specified in WAC 173-700-240 and 173-700-241.

#### NEW SECTION

**WAC 173-700-220 Convening the interagency review team.** (1) If the department determines that the proposed bank may proceed with preparation of the draft instrument, the department shall invite representatives from the appropriate federal and state regulatory and resource agencies, the local jurisdiction(s) where the bank site is located, and affected tribes to participate on the IRT.

(2) The department shall serve as chair of the IRT. For bank proposals seeking federal approvals in addition to state certification, the U.S. Army Corps of Engineers may cochair the IRT.

#### NEW SECTION

**WAC 173-700-221 Purpose of the instrument.** (1) An instrument details all of the physical characteristics, legal obligations, operational procedures, monitoring, and maintenance requirements for a bank.

(2) Requirements for instruments may vary based on the specific conditions of the bank site.

#### NEW SECTION

**WAC 173-700-222 Content of the instrument.** The minimum technical elements required in the instrument are:

- (1) The goals and objectives of the project;
- (2) Site location including city or county, proximity to existing roads and other landmarks, and a vicinity map showing location of the proposed site(s);
- (3) A description of existing conditions of the proposed site(s) including, but not limited to:
  - (a) Local land use or zoning designation;
  - (b) Current uses;

(c) Presence of liens, rights of way, easements, or other encumbrances;

(d) The landscape position of the site including WRIA, basin, and subbasin location;

(e) Wetland types present on the site including Cowardin classification and HGM class of each wetland;

(f) Other habitat types present;

(g) Technical information on wetland delineations, soil types, vegetation, and water sources, including surface water features and ground water information;

(h) An analysis of functions provided by on-site wetlands;

(i) Adjacent land uses that might affect the bank's function;

(j) Site constraints, conflicts, or known risks that could affect bank development or function;

(k) Identification of all buildings, structures, and other built features that would remain on the site after construction;

(l) Identification of existing mitigation sites and whether they will remain on-site after construction; and

(m) Detailed site map(s) that includes, but is not limited to:

(i) Total area of site;

(ii) Location, delineated boundaries, size, and number of existing wetlands;

(iii) Location of all streams, ponds, and other water features on and adjacent to the site;

(iv) Location and type of all known water control features on and adjacent to the site; and

(v) Presence of rights of way, easements, or other encumbrances.

(4) A statement of how the bank meets any watershed restoration needs and how its design and location are ecologically appropriate;

(5) The rationale for site selection addressing the considerations listed in WAC 173-700-303;

(6) A detailed description of the proposed bank site including, but not limited to:

(a) The bank size;

(b) The Cowardin and HGM classes, wetland rating, and sizes of wetlands and other aquatic resources proposed;

(c) A description of the buffers for the site and any other habitats provided on the site;

(d) The functions to be provided by the bank and level of increase over existing conditions;

(e) Detailed site design plans and specifications to include grading plans, planting plans, and specifications for any structures; and

(f) Construction timing and schedules.

(7) Documentation of the ownership of bank lands and a legal description of the bank site;

(8) A detailed description of sponsor responsibilities for construction implementation, monitoring and reporting, and maintenance;

(9) A description and map of the service area and accompanying rationale that demonstrates the service area is ecologically appropriate;

(10) The potential number of credits to be generated by the bank and a credit description consistent with WAC 173-700-310;

- (11) A description of any restrictions on use of credits;
- (12) Documentation of water rights for the proposed bank, if required;
- (13) An evaluation of historic, cultural, and archaeological resources on the bank site;
- (14) Credit tracking and accounting procedures including reporting requirements;
- (15) Performance standards for determining bank success and credit release including a schedule for the phased release of credits, if necessary;
- (16) Monitoring plan and reporting protocols including a clear statement of responsibility for conducting the monitoring and reporting;
- (17) An adaptive management plan and statement of responsibility for adaptive management activities;
- (18) Financial assurances;
- (19) The ownership arrangements and long-term management plan for the bank;
- (20) Provisions for permanent protection of the bank site;
- (21) Force majeure clause (identification of sponsor responsibilities in the event of catastrophic events that are beyond the sponsor's control);
- (22) Any supporting documentation requested by the department;
- (23) A provision stating that legal responsibility for providing the compensatory mitigation lies with the sponsor once a permittee secures credits from the sponsor; and
- (24) Default and closure provisions.

#### NEW SECTION

**WAC 173-700-223 Preliminary review of the technical elements of the draft instrument.** Prior to submitting the draft instrument, the sponsor may elect to have meetings with the IRT to discuss technical elements of their proposal. This preliminary review is optional, but is strongly recommended. It is intended to identify potential issues early, so the sponsor may attempt to address those issues prior to the start of the formal draft instrument review process.

#### NEW SECTION

##### **WAC 173-700-224 Submittal of the draft instrument.**

- (1) If the sponsor chooses to proceed with the certification process, they must prepare a draft instrument and submit an electronic and hard copy to the department.
- (2) The sponsor must develop the instrument using feedback from the department, the IRT, and comments received during the prospectus phase.
- (3) The draft instrument must contain all of the information identified in WAC 173-700-222 to be complete.
- (4) After receiving the draft instrument, the department shall determine whether the instrument is complete and notify the sponsor within thirty days. If the draft instrument is not complete, the department shall notify the sponsor in writing of its determination and identify any additional information that is necessary to complete the instrument. Once a modified draft instrument is submitted, the department must notify the sponsor as soon as it determines that the draft instrument is complete.

#### NEW SECTION

##### **WAC 173-700-225 Review of the draft instrument.**

- (1) Upon receipt of notification by the department that the draft instrument is complete, the sponsor must provide an electronic and a hard copy of the complete draft instrument to each member of the IRT.
- (2) The IRT will have thirty days to comment on the draft instrument to the department. The thirty-day comment period begins five days after the department receives its copy of the complete draft instrument as described in subsection (1) of this section.
- (3) Following the comment period, the department will discuss any comments with the appropriate agencies and the sponsor. The department will:
  - (a) Notify the sponsor of the recommendations and comments received from the IRT;
  - (b) Identify any additional information that the sponsor must submit; and
  - (c) Identify additional terms and conditions required as part of the certification.
- (4) If the department requests additional information, the certification process shall stop until the requested information is received.
- (5) Within ninety days of receipt of the complete draft instrument by the IRT members, the department must notify the sponsor of the status of the review. Specifically, the department must indicate to the sponsor if the draft instrument is generally acceptable and what changes, if any, are needed.
- (6) The department will seek to resolve concerns using a consensus-based approach, to the extent practicable.
- (7) If there are significant unresolved concerns that may lead to a formal objection from one or more IRT members to the final instrument, the department will notify the sponsor of the nature of those concerns.

#### NEW SECTION

##### **WAC 173-700-230 Submittal of the final instrument.**

- (1) The sponsor shall submit a final instrument to all members of the IRT in electronic and hard copy format for approval by the department.
- (2) The final instrument must contain the items listed in WAC 173-700-222, in addition to other supporting information as required by the department. This supporting information may include, but is not limited to:
  - (a) An explanation of how the final instrument addresses the comments provided by the department and the IRT;
  - (b) Financial assurance documents;
  - (c) Legal mechanisms for the permanent protection of the bank site; and
  - (d) Hydrologic and other ecological studies.
- (3) Within thirty days of receipt of the final instrument, the department shall provide public notice on the proposed certification.
- (4) At the end of the public comment period, the department shall direct the sponsor to incorporate changes as needed based on the comments received. After incorporating the required changes, the sponsor shall submit the revised instrument to the department.

(5) Within thirty days of receipt of the revised instrument, the department notifies the local jurisdiction(s) of its intent to approve or deny the certification. If the department intends to certify the bank, it will request a decision on certification from the local jurisdiction(s).

(6) The local jurisdiction(s) reviews the intent to certify, determines whether it concurs with the certification, and notifies the department in writing.

(a) If the local jurisdiction(s) does not concur with the intent to certify, the notice shall state the reasons for the local jurisdiction's decision.

(b) The department shall not certify the bank if the local jurisdiction(s) does not concur with the certification.

(c) If the local jurisdiction(s) concurs with the intent to certify, the notice shall state the local jurisdiction's intent to sign the instrument.

(7) After receipt of the local jurisdiction's decision, the department must send a notice on its certification decision to the IRT.

(8) Within fifteen days of receipt of the certification decision, if no IRT member objects by initiating the dispute resolution process, the department will notify the sponsor of the final decision. If the instrument is approved, the sponsor will arrange for it to be signed by the appropriate parties.

#### NEW SECTION

**WAC 173-700-231 Signatories of the instrument.** An instrument must contain signatures from the department, the local jurisdiction(s), and the sponsor for certification to be complete.

(1) Signature on the instrument shall indicate that entity's concurrence with the terms and conditions of the instrument.

(2) No agency, except for the department and the local jurisdiction(s), is required to sign an instrument in order for certification to be complete.

(3) IRT member agencies and tribes are encouraged to sign the instrument.

#### NEW SECTION

**WAC 173-700-232 Dispute resolution process.** An IRT member(s) who has concerns with a particular decision or element of an instrument shall submit the concern and accompanying rationale in writing to the chair(s) of the IRT within fifteen days of the decision. The following dispute resolution process for resolving concerns shall be used:

(1) The chair(s) of the IRT shall outline the majority position on the area of concern and shall work with the IRT member(s) to develop potential solutions to those concerns.

(2) The department shall make every effort to resolve concerns within the IRT before the conflict is elevated to the program manager of the department's shorelands and environmental assistance program.

(3) In the event that the IRT is still unable to reach consensus, within thirty days of receipt of the concern by the department, the IRT member with the concern may request, through written notification, that the department's program management review the issue. The written notification must be directed to the program manager of the shorelands and

environmental assistance program or the program manager's designee. Such a notification must include:

- (a) A detailed description of the issue; and
- (b) Recommendations for resolution.

(4) Within thirty days of receipt of a notification, the program manager or designee shall contact the IRT member with a final decision on the resolution. The decision of the program manager shall be the final decision of the department. The resolution shall be forwarded to the other IRT members.

#### NEW SECTION

**WAC 173-700-233 Review timelines.** (1) When additional information or changes to documents are requested by the department, the review timelines shall stop until the requested information is received. If the requested information is not received by the department within one hundred eighty days, the department has the option of canceling the certification process. If the certification process is canceled, the sponsor may apply to restart the certification process.

(2) The timelines in WAC 173-700-212, 173-700-225, and 173-700-230 may be extended by the department at its sole discretion in cases where:

(a) It is necessary to conduct government-to-government consultation with affected tribes;

(b) Timely submittal of information necessary for the review of the proposed bank is not accomplished by the sponsor;

(c) Information that is essential to the department's decision cannot be reasonably obtained within the specified time frame; or

(d) Other permits or authorizations needed for certification cannot be completed within the specified time frame.

(3) In such cases, the department must promptly notify the sponsor in writing that the review timelines have stopped or have been extended, with an explanation of the reason. Such extensions shall be for the minimum time necessary to resolve the issue.

#### NEW SECTION

**WAC 173-700-240 Public notices.** (1) It is the department's goal to ensure that accurate information on the prospectus and the proposed bank certification is made available to the public, and to avoid duplicative processes for public comment.

(a) When an existing public notice process is available to solicit public comment, the department shall strive to provide a joint public notice.

(b) When an existing public notice process is not available, the department shall issue a public notice.

(2) A public notice comment period must be at least thirty days.

(3) If the department holds a public hearing, the comment period may be extended to one week after the hearing date.



NEW SECTION

**WAC 173-700-241 Notification on the prospectus and proposed certification.** At a minimum, the department shall notify the following entities:

- (1) The local jurisdiction(s) where the bank site is located;
- (2) Affected tribes located within the proposed service area;
- (3) The latest recorded real property owners, as shown by the records of the county treasurer, located within:
  - (a) Three hundred feet of the contiguous boundaries of the proposed bank property; or
  - (b) The distance from the property boundary as specified in local regulations.
- (4) The general public within a bank's proposed service area through:
  - (a) A published notice in a newspaper of general circulation in the service area of the proposed bank and in other counties as deemed appropriate;
  - (b) A notice posted by the sponsor in a conspicuous manner on the proposed bank property which is consistent with local regulatory requirements and adjacent to a public right of way; and
  - (c) A notice posted on the department's web site.
- (5) Other interested persons and organizations that have requested information on bank certifications, and all others deemed appropriate by the department.

NEW SECTION

**WAC 173-700-242 Public hearings.** (1) The sponsor, any interested government entity, any group, or any person may request a public hearing on the bank certification.

- (2) The written request must be received by the department during the comment periods for the prospectus or the proposed bank certification.
- (3) Any request for a public hearing shall indicate the interest of the party filing it and why a hearing is warranted.
- (4) The department shall determine, in its sole discretion, if significant public interest exists to hold a public hearing.
- (5) The department shall provide at least fourteen days' notice prior to any hearing.

### PART III BANK ESTABLISHMENT

NEW SECTION

**WAC 173-700-300 Ecological design incentives.** (1) One goal of this chapter is to encourage the development of banks that provide significant ecological benefits and are sustainable. In order to achieve this, incentives have been built into the certification and bank establishment process to encourage the siting and designing of banks that provide significant ecological benefits and restore watershed processes in areas identified as high priorities under a watershed-based approach to mitigation.

- (2) The incentives may include, but are not limited to, more favorable credit conversion rates and larger service areas.

- (3) The department shall make decisions regarding the application of specific incentives on a case-by-case basis.

NEW SECTION

**WAC 173-700-301 Service area.** (1) The department must determine the appropriate service area for proposed banks.

- (2) The sponsor must provide a detailed text description and a map of the bank's proposed service area in the instrument.
- (3) The maximum extent of a service area shall be the WRIA in which the bank is located, except when inclusion of portions of adjacent WRIAs is ecologically appropriate and defensible.

NEW SECTION

**WAC 173-700-302 Considerations for determining service area size.** The department considers the following elements when determining the size of the service area:

- (1) The functions provided by the bank and the distance from the bank that the ecological functions can reasonably be expected to compensate for impacts;
- (2) Whether the bank addresses existing watershed-based mitigation planning efforts;
- (3) How far the ecological and hydrological benefits of the bank extend beyond the bank site location;
- (4) The position of the bank within the watershed;
- (5) The degree to which the bank restores processes within the watershed;
- (6) The size and characteristics of the WRIA in which the bank is located;
- (7) The quality, diversity, and regional significance of the habitats provided;
- (8) Local needs and requirements, such as consistency with land use or watershed management plans;
- (9) Types of impacts that may be compensated through the use of credits from the bank; and
- (10) The degree to which the bank supports priorities found in, but not limited to, watershed management plans, watershed characterizations, wetland mapping or inventories, storm water management plans, shoreline master programs, salmon recovery plans and comprehensive land use plans.

NEW SECTION

**WAC 173-700-303 Site selection.** (1) Banks must be sited, planned, and designed to be self-sustaining over time. The department shall carefully consider ecological suitability, ecological sustainability, and land use compatibility when determining if a site is an appropriate location for a bank.

- (a) The department shall consider the following factors when determining if a proposed bank site is ecologically suitable for providing the desired aquatic resource functions, to the extent practicable:
  - (i) Whether the proposed location and design are consistent with watershed-based restoration priorities;

(ii) Whether the proposed location and design allow for the protection and restoration of ecological processes within the basin or the watershed;

(iii) Whether the proposed location and design protect or enhance wetland functions that can be sustained over time;

(iv) Whether the proposed location will possess the physical, chemical, and biological characteristics to support a sustainable wetland ecosystem;

(v) Whether the size and location of the bank are appropriate relative to the ecological features found at the site, such as sources of water;

(vi) Whether the proposed location has a high potential to connect or complement existing wetlands;

(vii) Whether the process of establishing the bank at the site will protect, enhance, or negatively affect ecologically significant aquatic or upland resources or habitat for threatened, endangered, or candidate species; and

(viii) The types of unavoidable impacts that are anticipated to use bank credits for mitigation.

(b) The department shall consider the following factors when determining if a proposed bank site is ecologically sustainable:

(i) Whether the bank site can be protected over time from direct, indirect, and cumulative impacts based on development trends and anticipated land use changes;

(ii) Whether the sponsor has obtained water rights for the site, if necessary; and

(iii) Other factors deemed appropriate.

(c) The department shall consider various factors when determining if a proposed bank site is compatible with the surrounding land. These factors shall include, but are not limited to:

(i) Whether the proposed location contains cultural resources;

(ii) Whether the proposed location and bank objectives are compatible with surrounding land uses located both up and down gradient;

(iii) Whether the proposed location contributes to the improvement of identified management problems within the drainage basin or watershed (e.g., sedimentation, water quality degradation, or flood control); and

(iv) What the historical land uses were at the proposed location (e.g., agricultural, chemical, industrial, and archaeological).

(2) Compatibility of banks and agricultural lands of long-term commercial significance (ALLCS).

(a) The department discourages the location of banks on prime farmland soils designated as ALLCS due to the important resource and societal values of those resource lands.

(b) If a bank is proposed to be located within an area designated as ALLCS:

(i) Impacts to prime farmland soils both on-site and off-site shall be avoided to the maximum extent possible;

(ii) The bank shall be located on nonprime farmland soils to the greatest extent possible;

(iii) The bank must be designed and constructed to not adversely affect adjacent and nearby agricultural operations. This includes, but is not limited to: Adverse effects on water flows to neighboring farms, and minimizing shading effects on adjacent farms; and

(iv) The bank should be designed to support local and regional environmental priorities found in, but not limited to, watershed management plans, watershed characterizations, wetland mapping or inventories, storm water management plans, shoreline master programs, salmon recovery plans and comprehensive land use plans.

(c) The department shall consult with the local conservation district and the conservation commission to determine whether the bank siting conflicts with local or statewide goals for agricultural land preservation.

#### NEW SECTION

**WAC 173-700-304 Buffers.** (1) The department determines the buffer necessary for each bank. The buffer for a bank must be sufficient to protect the functions at the bank.

(2) The department considers the following elements to determine the buffer necessary for a bank:

(a) The level of sensitivity of the wetlands to off-site activities;

(b) The functions and quality of the buffer (existing conditions and proposed conditions); and

(c) The intensity of adjacent land uses.

(3) Required buffers shall generally range between fifty and three hundred feet in width.

(4) The quality and functions of the buffer are included in determining the credit conversion rates for wetlands and aquatic resources on the bank site. Buffers generally do not directly generate credit on an area basis.

#### NEW SECTION

**WAC 173-700-310 Credit description.** The sponsor must provide a description of what the credits represent in the instrument.

(1) For credits determined using a conversion rate under WAC 173-700-313, the sponsor shall describe the credits in terms of wetland rating, HGM class, and Cowardin class. The credit description must list the ecological functions provided by the bank.

(2) For credits determined using an alternative method under WAC 173-700-321, the sponsor shall describe the credits and the method used to determine the credits.

(3) If different resource currencies are developed for a bank:

(a) The sponsor shall describe the credits and the method used to determine the credits;

(b) Those credits shall be quantified by the appropriate regulatory agency; and

(c) The accounting methods, including the relationship to wetland credits (e.g., the number of resource credits equivalent to a wetland credit), must be approved by the department and included in the instrument or an amendment to the instrument.

#### NEW SECTION

**WAC 173-700-311 Types of credits.** There are four types of credits associated with a bank: Potential, available, reserved and debited.

(1) A potential credit is a credit anticipated to be generated by the bank, but is not currently available for use. Potential credits have not been released by the department.

(2) An available credit is a potential credit that has been released by the department after a bank attains the performance standards specified in the instrument. Only available and reserved credits may be used to compensate for unavoidable wetland impacts authorized under a federal, state, or local permit or other authorizations in accordance with the conditions of the instrument.

(3) Reserved credit is an available credit that has been withdrawn from the bank but which is not associated with a specific regulatory requirement at the time of purchase. Purchase of reserved credits does not provide any guarantee that a project will be authorized under existing regulatory programs. Reserved credits are purchased at the buyer's sole risk.

(4) A debited credit is:

(a) An available credit that has been withdrawn from the bank to meet regulatory requirements.

(b) A reserved credit that has been used to meet a regulatory requirement.

(c) Removed from the ledger and cannot be used again.

NEW SECTION

**WAC 173-700-312 Default method for determining credits.** (1) The department shall use area of wetland as the default credit unit for calculating credits at a bank site.

(2) The department shall determine the number of potential credits at a bank using a credit conversion rate.

(3) The credit conversion rate uses a ratio of area of activity such as reestablishment, creation, rehabilitation, enhancement, or preservation to credits generated at the bank site (area of activity: Credit).

(4) Except as provided in WAC 173-700-320, the department must determine the credit conversion rates for individual banks from within the ranges specified in WAC 173-700-313 and 173-700-318.

NEW SECTION

**WAC 173-700-313 Wetland credit conversion rates.** The ranges for establishing conversion rates for wetland areas are as follows:

<b>If the mitigation activity is:</b>	<b>The conversion rate can range from: Area of activity: Credit</b>
Reestablishment	1:1 to 2:1
Creation (establishment)	1:1 to 2:1
Rehabilitation of altered processes	2:1 to 3:1
Enhancement of wetland structure	3:1 to 5:1
Preservation: In combination with reestablishment, creation, rehabilitation, or enhancement of wetlands	5:1 to 10:1

<b>If the mitigation activity is:</b>	<b>The conversion rate can range from: Area of activity: Credit</b>
Preservation: Alone	Case-by-case

NEW SECTION

**WAC 173-700-314 Considerations for determining credit conversion rates for wetland reestablishment, creation, rehabilitation, and enhancement.** Unless an alternative credit determination method is used under WAC 173-700-321, the department shall use the following considerations to determine specific conversion rates for wetlands on a bank site:

(1) The anticipated net gains in wetland functions at the site;

(2) The degree to which the bank restores ecological processes previously altered by human activity in a watershed, based on predicted success and sustainability of process restoration;

(3) The degree to which the bank is expected to successfully restore or maintain the appropriate HGM class of wetland for the landscape setting;

(4) The degree to which the bank incorporates a watershed-based approach for site location and design;

(5) The rarity of the predicted wetlands and habitats at the site, based on rarity at state and/or local level;

(6) The site's contribution to the protection, recovery, or both, of state or federally listed threatened or endangered species, protection of state priority species and habitats, and locally significant habitats;

(7) The degree of connectivity to other habitats and open space areas, based on existing connectivity and level of protection for connected areas; and

(8) Public access and education opportunities, where appropriate, as determined by the department.

NEW SECTION

**WAC 173-700-315 Considerations for determining credit conversion rates for wetland preservation.** (1) Preserving wetlands may generate credit when the preservation occurs in conjunction with the reestablishment, creation, rehabilitation, or enhancement of a wetland or, in exceptional circumstances, as the sole means of generating credits.

(2) Unless an alternative credit determination method is used under WAC 173-700-321, the department shall use the following considerations to determine specific conversion rates for preserved wetlands on a bank site:

(a) The degree to which the preservation area contributes to the ecological functioning of the overall bank site and the protection of watershed processes;

(b) The site is located in an area identified as a high priority for preservation and restoration in a watershed plan or characterization;

(c) The area proposed for preservation is a high quality wetland system, as determined using the considerations under WAC 173-700-316; and

(d) The area proposed for preservation is at risk because the wetland is under demonstrable threat of loss or substantial

degradation, due to human activities that might not otherwise be expected to be restricted based on local zoning codes, critical areas ordinances, Forest Practices Act, and foreseeable future land uses in the watershed.

#### NEW SECTION

**WAC 173-700-316 Considerations for determining high quality wetland systems.** The department shall determine whether a site is a high quality wetland system including, but not limited to:

- (1) Wetlands with special characteristics including:
  - (a) Estuarine wetlands;
  - (b) Natural Heritage wetlands;
  - (c) Bogs;
  - (d) Old-growth and mature forested wetlands;
  - (e) Interdunal wetlands;
  - (f) Vernal pools; and
  - (g) Alkali wetlands.
- (2) Bog-like wetlands, aspen-dominated wetlands, camas prairie wetlands, and marine water with eelgrass beds.
- (3) Category I wetlands (Washington state wetland rating system, 2004 or as amended).
- (4) Category II wetlands with a habitat score > 29 points (Washington state wetland rating system, 2004 or as amended).

#### NEW SECTION

**WAC 173-700-317 Considerations for determining credit conversion rates for banks in urban areas.** In urban areas wetlands and uplands may generate credits at the more favorable rates within WAC 173-700-313 and 173-700-318. The department will take into consideration the following when determining how much credit is generated:

- (1) WAC 173-700-314, 173-700-315, and 173-700-319;
- (2) Local land use zoning, anticipated future build-out, width of the buffer and its ability to protect the wetland or other aquatic resource from further degradation;
- (3) Integrated public education and directed access for passive recreation opportunities, where appropriate as determined by the department;
- (4) Whether the bank provides multiple functions; and
- (5) The degree to which the bank helps to implement local restoration priorities, shoreline master programs, local land use management plans, and watershed plans.

#### NEW SECTION

**WAC 173-700-318 Credit conversion rates for uplands and other habitats.** (1) Uplands and other habitat areas may generate credits to the extent that those areas contribute to the overall ecological functioning and sustainability of the bank.

(2) Enhancement of upland and other habitats may generate credits at a conversion rate from 3:1 to 10:1. Preservation of high quality uplands and other habitats may generate credits at a conversion rate from 8:1 to 15:1.

#### NEW SECTION

**WAC 173-700-319 Considerations for determining credit conversion rates for uplands and other habitats.** Unless an alternative credit determination method is used under WAC 173-700-321, the department shall use the following considerations to determine specific conversion rates for uplands and other habitats on a bank site:

- (1) Degree of contribution to the ecological functioning of the bank;
- (2) The existing or proposed enhanced condition of the uplands and other habitats; and
- (3) Connectivity to other habitats and open space areas, based on existing connectivity and level of protection for those adjacent areas.

#### NEW SECTION

**WAC 173-700-320 Exceptions to credit conversion rates.** (1) The department may allow a conversion rate for wetlands, uplands, and other habitat areas that are outside of the ranges specified in WAC 173-700-313 and 173-700-318.

(2) All exceptions for credit conversion rates authorized by the department must be:

- (a) Made on a case-by-case basis, considering the specific circumstances of a bank; and
- (b) Based on ecological considerations.

#### NEW SECTION

**WAC 173-700-321 Using an alternative method to determine credits.** The department may allow the use of an alternative method to determine credits so long as:

- (1) The department approves of the method;
- (2) The method is applicable and appropriate for the Pacific Northwest;
- (3) The method is applicable for use on projects debiting from the bank; and
- (4) The method is documented in the instrument.

#### NEW SECTION

**WAC 173-700-330 Schedule for the release of credits.** (1) The instrument shall include the amount and schedule for release of credits. Releases of credits must be tied to the attainment of performance standards.

(2) The department shall determine a schedule for the release of credits.

(3) The department shall base the number of credits to be released on the following considerations, but not limited to:

- (a) The amount of ecological gain at the time of the release;
- (b) The sponsor's experience and success with similar types of projects;
- (c) The expected length of time necessary to achieve project goals and performance standards; and
- (d) The potential for design failure.

(4) The credit release schedule and amount of credits eligible for release may not exceed the maximum amounts under WAC 173-700-332 through 173-700-335. The credit releases in these sections are cumulative in the sense that the

percentage of credits available for release under any particular section is the amount stated in that section, minus the percentage of credits released under all prior sections.

(5) The maximum percentages of credits able to be released under WAC 173-700-331 through 173-700-333 do not include credits generated by preservation of wetlands.

(6) The department may release credits generated by the preservation of existing wetlands or aquatic resources after the minimum requirements specified in WAC 173-700-331 have been met.

#### NEW SECTION

##### **WAC 173-700-331 Credit release—Preconstruction.**

(1) Up to fourteen percent of the total potential credits for the bank, or for the phase, may be released preconstruction. Initial physical and biological improvements must begin within one year following the release of credits.

(2) The following criteria must be met prior to any release of credits:

- (a) The instrument is signed and approved;
- (b) The permanent protection mechanism for the site is established;
- (c) The proof of financial assurances has been received by the department;
- (d) The long-term management and maintenance endowment fund escrow account or other approved financial assurance for such activity is established; and
- (e) All necessary permits and authorizations for site construction have been obtained.

#### NEW SECTION

##### **WAC 173-700-332 Credit release—Postconstruction.**

(1) Up to thirty percent of the total potential credits for the bank, or for the phase that has been constructed, may be released when the department, in consultation with signatories, approves:

(a) The complete implementation of construction plans; and

(b) The as-built condition of the bank or phase.

(2) Approval of the as-built condition of a bank or phase includes the following:

(a) The sponsor must submit as-built plans that reflect the final grading and planting of the site to the department and signatories; and

(b) The department must inspect the as-built condition of the bank.

(3) If the department approves the as-built plans and the constructed condition of the site, then the department must release the credit(s) specified in the instrument.

(4) If the bank cannot be constructed in accordance with the approved instrument, the sponsor must notify the department and signatories. Any changes to the bank design requires approval from the department and signatories prior to work occurring.

#### NEW SECTION

**WAC 173-700-333 Credit release—Attainment of hydrologic performance standards.** (1) Up to fifty percent

of total potential credits for the bank, or for the phase of the bank that has been constructed, may be released when the department, in consultation with signatories, determines that the hydrologic performance standard(s), at a minimum, has been attained.

(2) The department may require that additional performance standards be met prior to releasing up to fifty percent of the total potential credits.

#### NEW SECTION

##### **WAC 173-700-334 Credit release—Final release.** (1)

The department, in consultation with the signatories, may adjust the final number of potential credits available at a bank based on actual conditions of the bank site at the time of the final release of credits. The number of potential credits may be adjusted in the following ways:

(a) The total number of potential credits may be reduced if all of the required performance standards cannot be attained; or

(b) The total number of potential credits may be increased if:

(i) All of the required performance standards are met; and

(ii) The department determines that the site provides higher levels of function than originally projected.

(2) The department may not release all of the potential credits until the following requirements are met and approved:

(a) The bank site has attained the required performance standards;

(b) An approved long-term management plan has been submitted;

(c) The long-term management account is fully funded, or in the case of banks developed solely by public agencies a suitable long-term funding mechanism that has been approved by the department; and

(d) The long-term steward has been identified.

(3) If the department concurs that all the above requirements have been met, then the department must release all remaining potential credits specified in the instrument.

#### NEW SECTION

**WAC 173-700-335 Additional credit releases.** (1) Earlier releases of credits may be awarded by the department, in consultation with the signatories, as long as the maximum percentages for the release of potential credits specified in WAC 173-700-331 through 173-700-334 are not exceeded.

(2) Earlier releases of credits may be awarded by the department, in consultation with the signatories, if the sponsor performs approved actions beyond those identified in the instrument in order to increase the projected functions of the site. Earlier releases of credits will not be awarded for implementation of management activities that are necessary to attain the performance standards required in the instrument.

(3) Any deviation from the credit release schedule shall be documented in an amendment to the instrument.

NEW SECTION

**WAC 173-700-340 Performance standards.** (1) Performance standards must be based on the bank's objectives and goals as identified in the instrument.

(2) Performance standards must be measurable.

(3) The department may require multiple years of monitoring data to document the sustainable attainment of specific performance standards, particularly hydrologic performance standards.

NEW SECTION

**WAC 173-700-350 Financial viability.** (1) Certification of a bank under this chapter does not imply or guarantee the financial viability of the bank.

(2) Sponsors are responsible for conducting any financial studies prior to implementation of an instrument to determine the financial risks and potential economic viability of the bank.

(3) The department may not consider the economic standing of a bank when implementing mitigation sequencing, determining unavoidable impacts, or evaluating compensation alternatives for debit projects.

(4) The sponsor is responsible for all costs associated with the construction, operation, maintenance, long-term management, permanent protection, financial assurances, and remedial actions, if required.

NEW SECTION

**WAC 173-700-351 Financial assurances.** (1) The department must require financial assurances to ensure that the potential risks to the environment from unsuccessful banks are minimized. This may include financial assurances specifically for:

(a) The construction phase (see WAC 173-700-352);

(b) The monitoring and maintenance phase (see WAC 173-700-353); and

(c) The long-term management phase (see WAC 173-700-354).

(2) The amount of financial assurances required by the department must be determined on a bank-specific basis and be commensurate with the degree of risk of bank failure and the nature and extent of site alteration and development.

(3) The department will consider the timing of release of bank credits in determining the amount of financial assurances required.

(4) The department may reduce the amount of financial assurances over the operational life of the bank as the bank matures and the risk of failure is reduced.

(5) The instrument and the financial assurance mechanisms must specify the financial requirements and conditions, and the entity responsible for the release or cashing of the financial assurances.

(6) The department must determine the adequacy of the proposed financial assurances prior to certification.

(7) The department shall require financial assurances for construction, monitoring and maintenance, and long-term management of the site as specified in WAC 173-700-352 through 173-700-354.

(8) The financial assurances shall include department costs for contract administration and overhead, as necessary.

NEW SECTION

**WAC 173-700-352 Financial assurances for construction.** (1) If credits are released prior to the construction of a bank, the department must require a financial assurance for construction.

(2) The amount of the financial assurance must be sufficient to cover the estimated costs for construction of a portion of the bank site that the department determines is equivalent to the credits released prior to construction.

(3) Construction cost estimates must be based on the costs of having an independent contractor perform the construction of the bank. The sponsor must provide the department with a written estimate from a qualified contractor.

(4) The department shall authorize the release of the financial assurance mechanism for bank construction after the department has approved the as-built condition of the bank.

(5) If the first release of credits will occur after construction is completed and the department has approved the as-built plans, the department may require a financial assurance that would be adequate to stabilize the bank site in the event of default by the sponsor.

NEW SECTION

**WAC 173-700-353 Financial assurances for monitoring and maintenance.** (1) The department must require a financial assurance for monitoring and maintenance for all banks that have credit releases prior to full attainment of all performance standards.

(2) The sponsor must provide the department a written cost estimate, including an adjustment for inflation, from a qualified contractor. The cost estimates for monitoring and maintenance must be based on the costs to have the work specified below performed by an independent contractor.

(3) The amount of the financial assurance must be sufficient to cover all monitoring and maintenance activities listed under WAC 173-700-402 for the operational life of the bank and the below activities, but not limited to:

(a) Estimated costs for a contractor to implement the adaptive management activities identified in the instrument;

(b) Estimated costs of all monitoring activities required in the monitoring plan.

NEW SECTION

**WAC 173-700-354 Financial assurances for long-term management.** (1) The department must require financial assurances for the long-term management of a bank site.

(2) The sponsor must provide the department a written estimate for the costs of annual maintenance of the bank, including an adjustment for inflation, from a qualified contractor.

(3) The sponsor must secure sufficient funds for the anticipated long-term management costs. Appropriate long-term financing mechanisms include, but are not limited to, nonwasting endowments, trusts, contractual arrangements

with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, that entity must provide a plan for the long-term financing of the bank site.

(4) Any provisions necessary for long-term financing must be addressed in the instrument.

(5) If the ownership of the site is transferred in the future, the financial mechanism for long-term management must remain with the entity responsible for the long-term management of the bank site.

#### PART IV BANK OPERATION

##### NEW SECTION

**WAC 173-700-400 Monitoring plan.** (1) The goals of monitoring bank sites are to:

(a) Document the postconstruction baseline conditions at the site;

(b) Document the condition of the site as it develops over time;

(c) Document the attainment of performance standards; and

(d) Provide early identification of problems in the site's development that would trigger potential adaptive management activities.

(2) The sponsor must develop a monitoring plan for each bank site and include it in the instrument. The monitoring plan must include, but is not limited to:

(a) A description of the variables that will be monitored, a description of the methods or protocols used to monitor those variables, and how they will be evaluated;

(b) The monitoring protocols must be sufficient to provide an accurate representation of site conditions;

(c) A schedule of monitoring including the time of year, frequency, and duration; and

(d) A description of proposed photo documentation of the site.

##### NEW SECTION

**WAC 173-700-401 Monitoring and as-built reporting.** (1) The sponsor must submit to the signatories an electronic and a hard copy of the monitoring reports. The monitoring reports must accurately document the conditions and progress of the bank's development. The reports must be submitted according to the schedule specified in the instrument.

(2) The monitoring report must include, but is not limited to:

(a) A list of the bank's performance standards;

(b) A narrative summary of the results of the monitoring;

(c) Discussion of whether applicable performance standards were attained;

(d) Data collected during the monitoring;

(e) Location of transects, plots, and monitoring wells;

(f) Photo points or referenced locations where photographs of the site are taken periodically to document site progress;

(g) Identification of any probable causes for failure of the bank to attain any performance standards;

(h) Discussion of recommended adaptive management activities to improve attainment of performance standards or performance of functions at the site;

(i) Discussion of any adaptive management activities performed on the site;

(j) Name and qualification of the persons and organizations conducting the monitoring.

(3) The sponsor must submit to the department an as-built report that accurately documents the postconstruction conditions of the site within ninety days after the completion of grading, planting, or both.

(4) The sponsor must identify in the as-built report any variations from the approved site design plan.

##### NEW SECTION

**WAC 173-700-402 Monitoring and maintenance.** (1) The department shall determine a monitoring schedule for the bank.

(a) The schedule shall be of sufficient duration to show that the bank is progressing toward ecological success and a sustainable condition. Generally, the department shall require a ten-year monitoring schedule.

(b) Longer monitoring periods may be required for banks that contain wetland or other aquatic systems that require more time to reach a stable condition or where adaptive management activities or remedial actions have been undertaken.

(2) Monitoring and maintenance includes the following activities, but is not limited to:

(a) Regular monitoring of the site;

(b) Ongoing maintenance activities required during the operational life of the bank as specified in the instrument. These activities may include, but are not limited to, control of invasive species, irrigation, or maintenance of a water control structure; and

(c) Implementation of adaptive management activities or remedial actions, if required.

##### NEW SECTION

**WAC 173-700-403 Adaptive management plan.** (1) Each instrument must include an adaptive management plan.

(2) The adaptive management plan for a bank site must include the following elements, but is not limited to:

(a) Goals and objectives of the bank;

(b) Identification of potential causes for site failure;

(c) A management strategy to address unforeseen changes in site conditions or if the monitoring indicates that the site will not achieve performance standards specified in the instrument; and

(d) The sponsor's responsibilities and process for reporting and implementing adaptive management activities.

(3) The sponsor shall notify the department within thirty days if adaptive management activities are implemented to address unforeseen problems with site conditions.

(4) If the adaptive management activities are not effective in correcting deficiencies at the site, the department may require remedial actions as specified in WAC 173-700-601.

NEW SECTION**WAC 173-700-410 Obtaining credit releases.** (1)

Once the bank has met the required performance standards, the sponsor must petition the department in writing in order to obtain a release of credits.

(2) For preconstruction credit releases, the sponsor must include documentation that the minimum requirements in WAC 173-700-331 have been met.

(3) For postconstruction credit releases, the sponsor must send the department supporting monitoring data demonstrating that the required performance standards have been met.

(a) The department shall conduct an on-site inspection, as needed, to verify that performance standards have been met.

(b) The sponsor must allow the department access to the site and to all documentation relevant to the requested credit release.

(4) The department must grant the release of credits upon its approval that the bank met the required performance standards. The department must respond to the petition in writing.

NEW SECTION**WAC 173-700-411 Ledger tracking and reporting.**

(1) The sponsor must maintain a separate ledger for each bank.

(2) The ledger must be formatted to be consistent with the department's ledger template.

(3) The sponsor must submit a complete copy of the ledger at the following times:

(a) An annual ledger for the previous calendar year must be submitted by February 1st.

(b) An updated ledger must be submitted within thirty days after any credits are received, sold, or debited. This requirement also applies to other resource credits available at the bank.

(4) When a credit is debited from a bank to meet a permit requirement, and the credit sale is completed, the bank sponsor must record the permitted transaction at the auditor's office of the county in which the bank is located.

(a) Any recording fees or other costs are the responsibility of the sponsor.

(b) The sponsor must submit a copy of the recorded transaction to the department within thirty days of recording it at the auditor's office.

NEW SECTION

**WAC 173-700-412 Master ledger.** (1) The department shall maintain a master ledger for each bank and must cross check the sponsor's annual ledger against the master ledger.

(2) The department must notify the sponsor within sixty days of receipt of the sponsor's annual ledger if the ledger conflicts with the master ledger.

(3) The sponsor is responsible for reconciling any discrepancies between the sponsor's ledger and the department's master ledger. If the sponsor fails to resolve any discrepancies, the department may suspend the further use of available credits under WAC 173-700-603.

NEW SECTION

**WAC 173-700-413 Random audits.** (1) The department may conduct random audits during the operational life of a bank.

(2) The audit may include the department contacting the local jurisdiction(s) and the county auditor's office to verify all transactions listed in a bank's ledger.

(3) In the event of an audit, the sponsor must provide all supporting documentation requested by the department in order to verify transactions listed in the bank's ledger.

(4) Unexplainable discrepancies between the public records and the bank's ledger may result in the department initiating compliance actions under WAC 173-700-600 through 173-700-603.

NEW SECTION**WAC 173-700-420 Long-term management plan.** (1)

The instrument must identify the party responsible for the ownership and long-term management of the bank.

(2) A long-term management plan should include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs.

(3) The instrument may contain provisions allowing the sponsor to transfer the long-term management responsibilities of the bank site to a land stewardship entity, such as a public agency, nongovernmental organization, or private land manager, after review and approval by the department. This land stewardship entity need not be identified in the instrument, as long as the future transfer of long-term management responsibility is approved by the department.

(4) The owner of a bank may not complete any conveyance of title, easement, lease, or other interest directly related to the bank without adequate and complete provision for the continued management of the bank as specified in the instrument.

NEW SECTION

**WAC 173-700-421 Permanent protection.** (1) Bank sites must be permanently protected and preserved as specified in the instrument. The department requires that the sponsor use a legal mechanism to ensure the permanent protection and preservation of the site. Generally, the department shall require a conservation easement.

(2) The department may approve other legal and administrative mechanisms, in lieu of a conservation easement, if it determines they are adequate to protect the site.

(3) The legal mechanisms must:

(a) Be approved by the department and secured prior to any release of credits;

(b) Limit site activities that are incompatible or interfere with the goals, purposes, and ecological functioning of the site;

(c) Transfer with the property;

(d) Contain a provision requiring a sixty-day advance notification to the department before any action is taken to void or modify the mechanism, including transfer of title, or establishment of any other legal claims over the bank site;



(e) Require the easement holder of the bank to notify and receive approval from the department for any proposal to use the bank in a manner that is inconsistent with the conservation easement or other approved legal mechanism; and

(f) Grant the department and its designated representatives the right to enter the bank at reasonable times for the purpose of evaluating compliance with the terms of the instrument and the conservation easement or other approved legal mechanism.

## PART V USE OF BANK CREDITS

### NEW SECTION

**WAC 173-700-500 Use of bank credits.** Banks can be a preferable option for compensating for authorized impacts. Use of a bank can help reduce risk and uncertainty as well as temporal loss of resource functions and services when used to compensate for authorized impacts. Local and state agencies are encouraged to use banks as a tool for implementing various management and restoration plans. These plans may include, but are not limited to, watershed management plans, watershed characterizations, storm water management plans, shoreline master programs, salmon recovery plans, and comprehensive land use plans. Banks can restore processes, habitats, and functions identified as priorities within the watershed.

(1) The department requires an approved instrument that includes a mitigation plan, appropriate real estate protections, and financial assurances for a bank. The department requires that the bank attain performance standards before credits can be used.

(2) Projects located within the bank's service area are eligible to apply to use credits from that bank to compensate for authorized unavoidable impacts.

(3) Permitting agencies for debit projects should ensure that mitigation sequencing has occurred before approving the use of credits.

(4) The permitting agencies determine whether the use of credits from a bank provides appropriate compensation for a debit project's unavoidable impacts.

(5) Under no circumstances may the same credits be debited as compensation for a different impact authorized under another regulatory program.

(6) Some debit projects may require authorization under more than one regulatory program (e.g., section 404 authorization, local grading permit, and a hydraulic project approval). Where appropriate, banks may be designed to holistically address requirements under multiple programs and authorities for the same activity.

(7) The sponsor is responsible for obtaining all approvals from the signatories when proposing to use credits in a manner that is inconsistent with the terms and conditions of the instrument.

### NEW SECTION

**WAC 173-700-501 Replacement ratios for debit projects.** (1) Replacement ratios used to determine compen-

sation requirements for debit projects should generally be lower than those required for permittee-responsible mitigation because of the reduced risk of failure and reduction in temporal losses.

(2) The replacement ratios for debit projects should take into consideration that credit conversion rates for banks include adjustments for the site's overall ecological benefit. One credit at a bank is not necessarily equal to one acre on the ground. In many cases, one credit from a bank represents more than one acre at the bank site.

(3) Replacement ratios for debit projects should reflect the extent to which the bank site adequately compensates for lost wetland functions at the impact site.

(4) Recommended replacement ratios are generally included in the instrument.

### NEW SECTION

**WAC 173-700-502 Use of bank credits outside of the service area.** (1) The department, in consultation with the signatories, may authorize the use of credits to compensate for impacts outside of the bank's designated service area if the department deems that use to be reasonable and environmentally desirable.

(2) Linear projects that contain at least one impact within the bank's service area, such as roadways, transmission lines, distribution lines, pipelines, or railways, may be eligible to use a bank even though not all of the projects' impacts are located within the bank's service area. However, the following conditions must be met:

(a) The bank must provide appropriate compensation for the impacts; and

(b) The determination to allow use of credits for impacts lying outside of a bank's service area must take into consideration the elements used in determining the bank's service area.

## PART VI COMPLIANCE WITH CERTIFICATION

### NEW SECTION

**WAC 173-700-600 Compliance with the terms of certification.** It is the department's goal to ensure that the establishment and operation of a bank is consistent with the terms and conditions of the certification as specified in the instrument. The department may use one or more of the methods in WAC 173-700-601 through 173-700-603 to gain compliance of certified banks.

### NEW SECTION

**WAC 173-700-601 Remedial actions.** (1) If a bank does not attain the required performance standards or meet other requirements specified in the instrument or this chapter, the sponsor shall implement adaptive management activities. If such activities do not achieve compliance within a reasonable time, the department may require remedial actions, which may include additional adaptive management activities or other activities necessary to achieve compliance.

(2) If the sponsor determines that the bank will not attain performance standards, the sponsor shall notify the department and the signatories.

(3) Any agency, entity, or person may also notify the department if it has supporting documentation that a bank site is not successfully meeting the required performance standards. The notification must include:

- (a) A clear statement of the issue;
- (b) Supporting documentation of the problem, such as photographic evidence, documentation from field reviews, the submitted monitoring report, or the credit release petition; and
- (c) Recommendations for remedial actions or other alternatives to address the problem.

(4) If the department determines that remedial actions are necessary:

- (a) The department shall consult with the signatories to determine appropriate remedial actions;
- (b) During consultation, the signatories may recommend remedial actions to the department and may comment on remedial actions proposed by the department; and
- (c) The department shall consider the recommendations and comments of the signatories, if any, and shall make the final decision regarding appropriate remedial actions.

(5) The department shall issue, in writing, its determination for required remedial actions to the sponsor and the signatories.

#### NEW SECTION

**WAC 173-700-602 Compliance with required remedial actions.** (1) If the sponsor does not complete the required remedial actions within the schedule specified by the department, the department must send a notice of non-compliance to the sponsor and to the signatories.

(2) The sponsor must respond in writing to the department within fifteen days of receipt of the notice. The response shall include an explanation of why the sponsor has not implemented the required remedial actions and a proposed schedule for completion.

(3) The department, in consultation with interested signatories of the bank, shall determine whether the reasons provided by the sponsor constitute extenuating circumstances and shall determine whether to extend the schedule for implementing remedial actions.

(4) If the department determines that the schedule should be extended, the department must notify the sponsor in writing.

(5) If the department determines that the schedule should not be extended, the department must notify the sponsor by certified mail with return receipt requested that it intends to proceed with one of the following actions:

- (a) Use the posted financial assurances to have the required remedial actions completed;
- (b) Adjust the total number of potential credits at the bank under WAC 173-700-334; or
- (c) Suspend the use and sale of available credits at the bank under WAC 173-700-603.

(6) The department may initiate the actions specified in subsection (5) of this section thirty days after the date of mailing of the department's notice to the sponsor.

#### NEW SECTION

**WAC 173-700-603 Suspension of credit use.** (1) The department may suspend the sale of credits to bring a bank into compliance. If the department suspends the sale of credits, credits may not be debited until the department lifts the suspension and notifies the sponsor in writing that credit use may be resumed.

(2) The suspension shall include all available credits at a bank.

(3) Use of available credits may be suspended if the department determines that:

- (a) A bank is out of compliance with the terms of its certification and the sponsor has not implemented the remedial actions required by the department;
- (b) The sponsor has not made reasonable efforts to bring the bank into compliance;
- (c) There is documented fraudulent use of the bank; or
- (d) Initial physical and biological improvements have not been initiated within one year following the initial release of credits, unless the sponsor and signatories agree to a longer construction timeline.

(4) If credit use is suspended by the department, the department must notify the sponsor by certified mail with return receipt requested that further sale of credits has been suspended.

(5) The department shall maintain the suspension until compliance is achieved.

### **PART VII RESPONSIBILITIES AND ROLES**

#### NEW SECTION

**WAC 173-700-700 Role of the interagency review team.** (1) The IRT assists in the development of the terms and conditions of the instrument by participating in negotiations with the sponsor.

(2) The IRT reviews proposed bank certifications and makes recommendations to the department.

(3) The IRT assists the sponsor in identifying any permits or approvals that may be required from their agency.

(4) The IRT ensures that certified banks are technically feasible and ecologically appropriate.

#### NEW SECTION

**WAC 173-700-701 Role of the signatories.** (1) Signatories provide assistance to the department in overseeing the establishment and operation of that bank.

(2) Signatories provide input to the department on whether a credit release petition should be granted.

(3) Signatories review and provide comments to the department on any proposed uses of bank credits that are not consistent with the terms of the certification.

(4) Signatories notify the department if they determine that the bank is out of compliance with the terms of its certi-

fication and recommend whether remedial actions are warranted to bring the bank into compliance.

(5) Signatories must notify the department if they have any comments regarding the department's proposed remedial actions required under WAC 173-700-601.

### PART VIII APPEALS

#### NEW SECTION

**WAC 173-700-800 Appeals process.** A decision to issue or deny a final certification may be appealed to the pollution control hearings board under chapter 43.21B RCW.

#### WSR 09-19-026

##### PERMANENT RULES

##### DEPARTMENT OF PERSONNEL

[Filed September 8, 2009, 9:15 a.m., effective October 9, 2009]

Effective Date of Rule: October 9, 2009.

Purpose: The following proposed new rule addresses what happens if an employee requests a director's review of his/her allocation or files exceptions to the director's decision and is laid off before a decision is issued.

**NOTE: We are filing this correction because we inadvertently filed the wrong language on August 13, 2009, WSR 09-17-061. This new language will be effective October 9, 2009.**

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-122 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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: September 8, 2009.

Eva N. Santos  
Director

#### NEW SECTION

**WAC 357-13-083 What happens if an employee requests a director's review of his or her allocation or files an exception to the director's decision and is laid off before a decision is issued?** When an employee's position has been reallocated as part of a board or director's decision

on allocation and when the employee was laid off prior to the board or director's decision being issued, the following applies:

(1) The employee's position is reallocated effective as of the date the request for a position review was filed with the employer;

(2) If the employee was reallocated to a class with a higher salary range, the employee is due back pay from the effective date of the allocation to the effective date of the lay-off;

(3) The layoff action (including options afforded to the employee) is not impacted; and

(4) The employee shall have layoff list rights to the class the employee's former position was reallocated to in accordance with WAC 357-46-070 and 357-46-080.

#### WSR 09-19-032

##### PERMANENT RULES

##### CRIMINAL JUSTICE

##### TRAINING COMMISSION

[Filed September 9, 2009, 1:28 p.m., effective October 10, 2009]

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

Purpose: Establish a process to grant a basic reserve law enforcement officer a certificate of equivalency for persons who have incurred a break in service as a Washington reserve law enforcement officer and desire to return to service as a reserve law enforcement officer.

Persons who have elected to serve as volunteer reserve law enforcement officers may have a break in service as a reserve law enforcement officer. If a reserve law enforcement officer incurs a break in service in excess of twelve consecutive months, the officer's recognition as a reserve law enforcement officer is considered to have lapsed. This WAC establishes a process of certain conditions that must be met for a person who has been a reserve law enforcement officer and incurred a break in service to have that person's status and recognition as a reserve law enforcement officer reinstated.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 09-16-070 on July 30, 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 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: September 9, 2009.

Sonja Hirsch  
Rules Coordinator

NEW SECTION

**WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency.** (1) A certificate of equivalency for the basic reserve law enforcement academy shall be issued only to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" shall include all documentation and prerequisites set forth in subsection (6) of this section and successful completion of all knowledge and skills requirements within the basic reserve law enforcement equivalency academy. A certificate of completion of equivalent reserve law enforcement training is recognized in the same manner as the certificate of completion of the basic reserve law enforcement academy.

(2) Eligibility for participation in the basic reserve law enforcement equivalency process shall be limited to fully commissioned reserve law enforcement officers and fully commissioned peace officers who have attained basic certification through completion of a basic training program or a basic reserve law enforcement academy/program in this state and have incurred a break in service of more than twelve months but less than thirty-six months. For this purpose, the term "basic training program" does not include any military or any federal training program not otherwise approved by the commission.

(3) Requirements for a person to achieve a certificate of equivalency as a reserve law enforcement officer who has incurred a break in service of:

(a) More than twelve but less than twenty-four months must successfully complete the requirements of RCW 43-101.080(19) and the comprehensive reserve final test procotored by the commission.

(b) More than twenty-four but less than thirty-six months must successfully pass the psychological and polygraph tests, complete the criminal history and background check, and successfully pass the comprehensive reserve final test procotored by the commission.

(c) More than thirty-six months break in service requires the person to attend the basic reserve law enforcement academy.

(4) It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner and as necessary to ensure that the participation provided by this section is affected.

(5) The decision to request an officer's participation within the equivalency process shall be discretionary with the head of the officer's employing agency, who shall advise the commission of the decision by appropriate notification upon the hiring of the officer. Upon receipt of such notification, the commission shall provide to such agency head all necessary forms and information required for the processing of a request for a certificate of equivalency.

(6) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing

agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) A copy of the applicant's certificate of successful completion of an approved basic or reserve academy/program as outlined in subsection (1) of this section.

(b) Proof that a search of state and national criminal history records has been conducted by the employing agency regarding applicant through appropriate submission of the applicant's fingerprints and such search indicated the absence of any conviction of applicant for a felony offense, a misdemeanor, or gross misdemeanor offense involving moral turpitude.

(c) The candidate has successfully completed a psychological examination and a polygraph.

(d) A copy of the applicant's current and valid driver's license.

(e) A record of the applicant's firearms qualification.

(f) A record that the applicant is current in defensive tactics.

(7) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will issue a certificate of completion of equivalent basic reserve law enforcement training.

**WSR 09-19-042**

**PERMANENT RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed September 10, 2009, 10:41 a.m., effective October 11, 2009]

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

Purpose: The department is adopting the following rule to WAC 388-110-140.

The purpose of this rule is to:

- Include kitchen sink requirements for assisted living resident units in boarding homes;
- Clarify rule language; and
- Delete unnecessary or redundant language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-110-140.

Statutory Authority for Adoption: Chapter 74.39A RCW.

Other Authority: Chapter 18.20 RCW.

Adopted under notice filed as WSR 09-14-077 on June 29, 2009.

Changes Other than Editing from Proposed to Adopted Version: Clarified roll-in shower dimensions for newly contracted assisted living services to be consistent with licensed boarding home roll-in shower requirements.

A final cost-benefit analysis is available by contacting Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

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

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

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

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

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

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

Date Adopted: September 10, 2009.

Susan N. Dreyfus  
Secretary

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

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

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

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

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

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

(b) A ~~((separate))~~ private bathroom ~~((, which includes))~~. The private bathroom must be equipped with a sink, a toilet, and a shower or bathtub. ((In a new boarding home, the contractor must provide a minimum of)) At least one wheelchair accessible bathroom with a roll-in shower that is at least forty-eight inches by thirty-six inches must be provided for every two residents whose care is partially or fully funded ~~((by the department))~~ through the assisted living contract;

(c) A lockable entry door;

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

(i) A refrigerator(;;);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Purpose: The purpose of this rule is to raise the ferry tolls and charter rates within the specified WACs. The revisions follow the annual review of Washington state ferry's farebox revenue needs. No major effects are anticipated.

Citation of Existing Rules Affected by this Order: Amending WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.326.

Adopted under notice filed as WSR 09-16-147 on August 5, 2009.

Changes Other than Editing from Proposed to Adopted Version: The seasonal ferry toll surcharge in the adopted version is the same as in existing WAC tariff rules (vs. a higher July/August surcharge in the proposed version).

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

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

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

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

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

Date Adopted: September 10, 2009.

Reema Griffith  
Executive Director

**WSR 09-19-044**

**PERMANENT RULES**

**TRANSPORTATION COMMISSION**

[Filed September 10, 2009, 2:39 p.m., effective October 11, 2009]

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

AMENDATORY SECTION (Amending WSR 08-08-070, filed 3/31/08, effective 5/1/08)

**WAC 468-300-010 Ferry passenger tolls.**

**EFFECTIVE 03:00 A.M. (~~May 1, 2007~~) October 11, 2009**

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides <sup>1</sup>	Monthly Pass <sup>5</sup>	Bicycle Surcharge <sup>2,6</sup>
<del>((Via Passenger-Only Ferry</del>						
<del>*Seattle-Vashon</del>	<del>8.70</del>	<del>4.35</del>	<del>7.40</del>	<del>73.60</del>	<del>117.80</del>	<del>1.00</del> )
Via Auto Ferry	<u>(5.20)</u>	<u>((2.60))</u>	<u>((4.20))</u>	<u>((41.60))</u>	<u>((66.60))</u>	
*Fautleroy-Southworth	<u>5.30</u>	<u>2.65</u>	<u>4.25</u>	<u>42.40</u>	<u>67.85</u>	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island	<u>((6.70))</u>	<u>((3.35))</u>	<u>((5.40))</u>	<u>((53.60))</u>	<u>((85.80))</u>	
*Edmonds-Kingston	<u>6.90</u>	<u>3.45</u>	<u>5.55</u>	<u>55.20</u>	<u>88.35</u>	1.00
	<u>((2.60))</u>		<u>((2.10))</u>	<u>((41.60))</u>	<u>((66.60))</u>	
Port Townsend-Keystone	<u>2.65</u>	1.30	<u>2.15</u>	<u>42.40</u>	<u>67.85</u>	0.50
*Fautleroy-Vashon						
*Southworth-Vashon	<u>((4.30))</u>	<u>((2.15))</u>	<u>((3.45))</u>	<u>((34.40))</u>	<u>((55.05))</u>	
*Pt. Defiance-Tahlequah	<u>4.45</u>	<u>2.20</u>	<u>3.60</u>	<u>35.60</u>	<u>57.00</u>	1.00
	<u>((3.95))</u>	<u>((1.95))</u>	<u>((3.20))</u>	<u>((31.60))</u>	<u>((50.60))</u>	
*Mukilteo-Clinton	<u>4.10</u>	<u>2.05</u>	<u>3.30</u>	<u>32.80</u>	<u>52.50</u>	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday	<u>((9.85))</u>	<u>((4.90))</u>	<u>((7.90))</u>	<u>((71.20))</u>	N/A	2.00 <sup>7</sup>
	<u>10.10</u>	<u>5.05</u>	<u>8.10</u>	<u>72.80</u>		

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides <sup>1</sup>	Monthly Pass <sup>5</sup>	Bicycle Surcharge <sup>2,6</sup>
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Saturday	((10.95)) <u>11.20</u>	((5.45)) <u>5.60</u>	((8.80)) <u>9.00</u>	((71.20)) <u>72.80</u>	N/A	2.00 <sup>7</sup>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((16.00)) <u>16.40</u>	((8.00)) <u>8.20</u>	((12.80)) <u>13.15</u>	N/A	N/A	4.00 <sup>8</sup>
From Lopez, Shaw, Orcas and Friday Harbor to Sidney((@))	((6.00)) <u>6.15</u>	((3.00)) <u>3.05</u>	((4.80)) <u>4.95</u>	N/A	N/A	1.00 <sup>9</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	((22.00)) <u>22.55</u>	((11.00)) <u>11.25</u>	((17.60)) <u>18.10</u>	N/A	N/A	5.00 <sup>10</sup>

All fares rounded to the next multiple of \$0.05.

<sup>10</sup>BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

\* These routes operate as a one-point toll collection system.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$ 0.05.

<sup>1</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. ((Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a 20 ride card valid for 90 days from the date of purchase.)) For mail order deliveries, WSF may add additional days to allow for delivery times. ((Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.))

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

<sup>3</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel. ((This program will expire after October 10, 2009.))

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional Smart-Card program are also nontransferable and intended for a single user, but allow for unlimited usage.

<sup>6</sup>BICYCLE PERMIT - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 until the second Sunday in October).

<sup>8</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

<sup>9</sup>BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

**SCHOOL GROUPS** - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

**BUNDLED SINGLE FARE BOOKS** - WSF may bundle single fare types into multiride media as a customer convenience. ~~((This media shall be valid only through October 10, 2009, after which time the coupons shall not be accepted for passage.))~~ Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

**PEAK SEASON SURCHARGE** - A 20% surcharge shall be applied to passengers from May 1 to the second Sunday in October, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes. The resulting fare is rounded up to the next \$0.05 if required.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled

and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**AMENDATORY SECTION** (Amending WSR 08-08-070, filed 3/31/08, effective 5/1/08)

**WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.**

**EFFECTIVE 03:00 A.M. (~~May 1, 2007~~) October 11, 2009**

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Multiride Media 20 Rides <sup>2</sup>
Fauntleroy-Southworth Port Townsend/Key-stone	<del>((8.90))</del> 9.15	<del>((7.60))</del> 7.80	<del>((8.90))</del> 9.15	<del>((142.40))</del> 146.40
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	<del>((11.55))</del> 11.85	<del>((9.85))</del> 10.10	<del>((11.55))</del> 11.85	<del>((184.80))</del> 189.60
*Fauntleroy-Vashon *Southworth-Vashon	<del>((14.80))</del> 15.20	<del>((12.65))</del> 12.95	<del>((14.80))</del> 15.20	<del>((118.40))</del> 121.60
*Pt. Defiance-Tahlequah	<del>((6.85))</del> 7.00	<del>((5.85))</del> 5.95	<del>((6.85))</del> 7.00	<del>((109.60))</del> 112.00
10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	<del>((23.95))</del> 24.55	<del>((19.00))</del> 19.50	<del>((23.95))</del> 24.55	<del>((99.75))</del> 102.20
*Lopez - Wednesday-Saturday	<del>((26.60))</del> 27.25	<del>((21.10))</del> 21.65	<del>((26.60))</del> 27.25	<del>((99.75))</del> 102.20
*Shaw, Orcas - Sunday-Tuesday	<del>((28.75))</del> 29.45	<del>((23.80))</del> 24.40	<del>((28.75))</del> 29.45	<del>((119.65))</del> 122.65
*Shaw, Orcas - Wednesday-Saturday	<del>((31.90))</del> 32.70	<del>((26.40))</del> 27.10	<del>((31.90))</del> 32.70	<del>((119.65))</del> 122.65
*Friday Harbor - Sunday-Tuesday	<del>((34.15))</del> 35.05	<del>((29.20))</del> 30.00	<del>((34.15))</del> 35.05	<del>((142.15))</del> 145.90
*Friday Harbor - Wednesday-Saturday	<del>((37.90))</del> 38.90	<del>((32.40))</del> 33.30	<del>((37.90))</del> 38.90	<del>((142.15))</del> 145.90
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	<del>((16.65))</del> 17.95	<del>((16.65))</del> 17.95	<del>((16.65))</del> 17.95	<del>((66.40))</del> 71.80
<i>International Travel</i>				



ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Multiride Media 20 Rides <sup>2</sup>
Anacortes to Sidney and Sidney to all destinations	<del>((42.95))</del> 44.05	<del>((35.95))</del> 35.85	<del>((42.95))</del> 44.05	N/A
((Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	27.95	19.95	42.95	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((12.80))</del> 13.15	<del>((9.80))</del> 10.05	<del>((12.80))</del> 13.15	N/A
((Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>7</sup>	5.80	2.80	12.80	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	<del>((55.75))</del> 57.20	<del>((44.75))</del> 45.90	<del>((55.75))</del> 57.20	N/A

**EFFECTIVE 03:00 A.M. ((May 1, 2007)) October 11, 2009**

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Commuter 20 Rides <sup>2</sup>
Fauntleroy-Southworth Port Townsend/Key-stone	<del>((3.85))</del> 3.95	<del>((2.55))</del> 2.60	1.30	<del>((61.60))</del> 63.20
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	<del>((5.00))</del> 5.15	<del>((3.30))</del> 3.40	<del>((1.65))</del> 1.70	<del>((80.00))</del> 82.40
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	<del>((6.40))</del> 6.60	<del>((4.25))</del> 4.35	<del>((2.10))</del> 2.15	<del>((51.20))</del> 52.80
Mukilteo-Clinton	<del>((2.95))</del> 3.05	<del>((1.95))</del> 2.00	1.00	<del>((47.20))</del> 48.80
*Anacortes to Lopez - Sunday-Tuesday	<del>((12.70))</del> 13.05	<del>((7.75))</del> 8.00	<del>((2.85))</del> 2.95	<del>((105.75))</del> 108.40
*Lopez - Wednesday-Saturday	<del>((14.10))</del> 14.45	<del>((8.60))</del> 8.85	<del>((3.15))</del> 3.25	<del>((105.75))</del> 108.40
*Shaw, Orcas - Sunday-Tuesday	<del>((13.65))</del> 13.95	<del>((8.70))</del> 8.90	<del>((3.80))</del> 3.85	<del>((113.65))</del> 116.25
*Shaw, Orcas - Wednesday-Saturday	<del>((15.15))</del> 15.50	<del>((9.65))</del> 9.90	<del>((4.20))</del> 4.30	<del>((113.65))</del> 116.25
*Friday Harbor - Sunday-Tuesday	<del>((14.75))</del> 15.10	<del>((9.80))</del> 10.05	<del>((4.90))</del> 5.00	<del>((122.65))</del> 125.65
*Friday Harbor - Wednesday-Saturday	<del>((16.35))</del> 16.75	<del>((10.85))</del> 11.15	<del>((5.40))</del> 5.55	<del>((122.65))</del> 125.65
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	<del>((4.75))</del> 5.10	<del>((4.75))</del> 5.10	<del>((4.75))</del> 5.10	N/A
Anacortes to Sidney and Sidney to all destinations	<del>((21.40))</del> 21.95	<del>((13.40))</del> 13.75	<del>((5.40))</del> 5.55	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((7.40))</del> 7.55	<del>((4.40))</del> 4.45	1.40	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>(7))</sup> <sup>6</sup>	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	<del>((28.80))</del> 29.50	<del>((17.80))</del> 18.20	<del>((6.80))</del> 6.95	N/A

All fares rounded to the next multiple of \$0.05.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height

shall pay an overweight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversized motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other iden-

tification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

<sup>2</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. ~~((Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares-))~~

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>~~((RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.~~

<sup>7</sup>~~RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.))~~ VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain circumstances.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from ~~((the first Sunday in))~~ May 1 to the second Sunday in October except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw,

Orcas and Friday Harbor, except those using multiride media. A 114% surcharge shall be applied to the San Juan Islands to Sidney route. The resulting fare is rounded up to the next \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel. ~~((This program will expire after October 10, 2009.))~~

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. ~~((This media shall be valid only through October 10, 2009, after which time the media shall not be accepted for passage.))~~ Remaining value will not be eligible for refund or exchange. For mail order

deliveries, WSF may add additional days to allow for delivery time. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

AMENDATORY SECTION (Amending WSR 08-08-070, filed 3/31/08, effective 5/1/08)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

**EFFECTIVE 03:00 A.M. (~~May 1, 2007~~) October 11, 2009**

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Over 7'6" Under 30' High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth	((13.35))	((26.70))	((35.60))	((44.50))	((53.40))	((62.30))	((71.20))	
Port Townsend/Keystone	13.75	27.45	36.60	45.75	54.90	64.05	73.20	0.90
Seattle-Bainbridge Island								
Seattle/Bremerton	((17.35))	((34.65))	((46.20))	((57.75))	((69.30))	((80.85))	((92.40))	
Edmonds-Kingston	17.80	35.55	47.40	59.25	71.10	82.95	94.80	1.20
*Fauntleroy-Vashon								
*Southworth-Vashon	((22.20))	((44.40))	((59.20))	((74.00))	((88.80))	((103.60))	((118.40))	((1.50))
*Pt. Defiance-Tahlequah	22.80	45.60	60.80	76.00	91.20	106.40	121.60	1.55
	((10.30))	((20.55))	((27.40))	((34.25))	((41.10))	((47.95))	((54.80))	
Mukilteo-Clinton	10.50	21.00	28.00	35.00	42.00	49.00	56.00	0.70
*Anacortes to Lopez - Sunday-Tuesday <sup>2</sup>	((35.95))	((71.85))	((95.80))	((119.75))	((143.70))	((167.65))	((191.60))	((2.40))
	36.85	73.65	98.20	122.75	147.30	171.85	196.40	2.50
*Anacortes to Shaw, Orcas - Sunday-Tuesday <sup>2</sup>	((43.15))	((86.25))	((115.00))	((143.75))	((172.50))	((201.25))	((230.00))	((2.90))
	44.20	88.35	117.80	147.25	176.70	206.15	235.60	2.95
*Anacortes to Friday Harbor - Sunday-Tuesday	((51.25))	((102.45))	((136.60))	((170.75))	((204.90))	((239.05))	((273.20))	((3.45))
	52.60	105.15	140.20	175.25	210.30	245.35	280.40	3.55
*Anacortes to Lopez - Wednesday-Saturday <sup>2</sup>	((39.90))	((79.80))	((106.40))	((133.00))	((159.60))	((186.20))	((212.80))	((2.70))
	40.90	81.75	109.00	136.25	163.50	190.75	218.00	2.75
*Anacortes to Shaw, Orcas - Wednesday-Saturday <sup>2</sup>	((47.85))	((95.70))	((127.60))	((159.50))	((191.40))	((223.30))	((255.20))	((3.20))
	49.05	98.10	130.80	163.50	196.20	228.90	261.60	3.30
*Anacortes to Friday Harbor - Wednesday-Saturday	((56.85))	((113.70))	((151.60))	((189.50))	((227.40))	((265.30))	((303.20))	((3.80))
	58.35	116.70	155.60	194.50	233.40	272.30	311.20	3.90
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((25.00))	((49.95))	((66.60))	((83.25))	((99.90))	((116.55))	((133.20))	N/A
	26.95	53.85	71.80	89.75	107.70	125.65	143.60	
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	((64.45))	((64.45))	((85.90))	((107.40))	((128.85))	((150.35))	((171.80))	((2.15))
	66.10	66.10	88.10	110.15	132.15	154.20	176.20	2.25
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	((64.45))	((128.85))	((171.80))	((214.75))	((257.70))	((300.65))	((343.60))	((4.30))
	66.10	132.15	176.20	220.25	264.30	308.35	352.40	4.45
((Travelers with advanced reservations - \$15 fee)								
Anacortes to Sidney and Sidney to all destinations - Recreational Vehicles and Buses	49.45	49.45	70.90	92.40	113.85	135.35	156.80	2.15
Travelers with advanced reservations - \$15 fee								
Anacortes to Sidney and Sidney to all destinations <sup>5</sup> - Commercial Vehicles	49.45	113.85	156.80	199.75	242.70	285.65	328.60	4.30
	((19.20))	((19.20))	((25.60))	((32.00))	((38.40))	((44.80))	((51.20))	((0.65))
	19.75	19.75	26.30	32.90	39.45	46.05	52.60	0.70
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	((19.20))	((38.40))	((51.20))	((64.00))	((76.80))	((89.60))	((102.40))	((1.30))
- Commercial Vehicles	19.75	39.45	52.60	65.75	78.90	92.05	105.20	1.35

Oversize Vehicle Ferry Tolls<sup>1</sup>

Overall Unit Length - Including Driver

ROUTES	20' To Under 30' Under 7'6" High	20' To Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	Cost Per Ft. Over 80' @
<del>((Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney<sup>6</sup> - Recreational Vehicles and Buses - Commercial Vehicles</del>	<del>12.20</del>	<del>12.20</del>	<del>18.60</del>	<del>25.00</del>	<del>31.40</del>	<del>37.80</del>	<del>44.20</del>	<del>0.65</del>
	12.20	31.40	44.20	57.00	69.80	82.60	95.40	1.30))
	((83.65))	((83.65))	((111.50))	((139.40))	((167.25))	((195.15))	((223.00))	((2.80))
	85.85	85.85	114.40	143.05	171.60	200.25	228.80	2.90
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup> - Recreational Vehicles and Buses	((83.65))	((167.25))	((223.00))	((278.75))	((334.50))	((390.25))	((446.00))	((5.60))
- Commercial Vehicles	85.85	171.60	228.80	286.00	343.20	400.40	457.60	5.80

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 20-30 feet in length and over 7'6" in height shall be charged the 20-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: ((May 1, 2007)) October 11, 2009 - October ((10, 2009, \$56.50)) 9, 2010, \$58.25 base season, \$((76.25)) 78.75 peak season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

~~((<sup>5</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.~~

~~<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.)) VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain special circumstances.~~

COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for

summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 to the second Sunday in October. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded up to the next \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en

route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

**AMENDATORY SECTION** (Amending WSR 07-08-064, filed 3/29/07, effective 5/1/07)

**WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.** Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from ~~((July 1, 2006))~~ October 11, 2009, through June 30, ~~((2007))~~ 2010:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	<del>\$(1,559.00)</del> 1,791.00	<del>\$(1,384.00)</del> 1,481.00
Jumbo	<del>((1,517.00))</del> 1,742.00	<del>((1,353.00))</del> 1,446.00
Super	<del>((1,428.00))</del> 1,650.00	<del>((1,274.00))</del> 1,365.00
Evergreen	<del>((1,027.00))</del> 1,153.00	<del>((884.00))</del> 925.00
Issaquah	<del>((1,073.00))</del> 1,256.00	<del>((943.00))</del> 1,019.00
<del>((Steel</del>	<del>818.00</del>	<del>711.00))</del>
Rhododendron	<del>((718.00))</del> 874.00	<del>((612.00))</del> 694.00
Hiyu	<del>((508.00))</del> 651.00	<del>((447.00))</del> 531.00

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

**WSR 09-19-046**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed September 10, 2009, 3:10 p.m., effective October 11, 2009]

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

Purpose: The purpose of this rule-making order is to implement HB 1270 (2005) which provided LEOFF Plan 2 members and retirees the option of membership in a PERS, PSERS, SERS, or TRS eligible position upon returning to work. This order will adopt changes to WAC 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS? and 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS?; and new WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS? and 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?

Citation of Existing Rules Affected by this Order: Amending WAC 415-108-725 and 415-110-725.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.04.270 and 41.26.500.

Adopted under notice filed as WSR 09-16-069 on July 30, 2009.

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

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

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

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

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

Date Adopted: September 10, 2009.

Steven R. Hill  
Director

NEW SECTION

**WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?** (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(2) If you are **eligible to retire** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.-010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless you are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms in this section are:

(a) "Membership" - RCW 41.37.020.

(b) "Service" - RCW 41.37.010.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

**WAC 415-108-725 If I have retired from another retirement (~~plan~~) system or am eligible to retire, am I excluded from participating in PERS?** (1) If you have **retired** (~~or are eligible to retire~~) from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March ~~(+)~~ 19, 1976; ~~(or)~~

(b) You accrued less than fifteen years of service credit in the other retirement (~~plan~~) system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(2) If you are eligible to retire from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are receiving a disability allowance from ~~(any)~~ another retirement system ~~((administered by the department you can not))~~ listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March ~~(+)~~ 19, 1976; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

~~((+))~~ (4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

~~(b) ("Retirement plan" - WAC 415-108-010.~~

~~(or))~~ "Service" - RCW 41.40.010.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

**WAC 415-110-725 If I have retired from another retirement (~~plan~~) system or am eligible to retire, am I excluded from participating in SERS?** (1) If you have **retired** (~~or are eligible to retire~~) from another retirement system authorized by the laws of this state, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement (~~plan~~) system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(2) If you are eligible to retire from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described is RCW 41.54.010.

(3) If you are receiving a disability allowance from ~~(any)~~ another retirement system ~~((administered by the department))~~ listed in RCW 41.50.030, you cannot participate in SERS membership unless you are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

~~((+))~~ (4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.35.030.

~~(b) ("Retirement plan" - WAC 415-110-010.~~

~~(or))~~ "Service" - RCW 41.35.010.

NEW SECTION

**WAC 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?** (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(2) If you are **eligible to retire** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.-54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless you are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" – RCW 41.32.032.

(b) "Service" – RCW 41.32.010.

**WSR 09-19-050**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 11, 2009, 9:39 a.m., effective October 12, 2009]

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

Purpose: This amendment reduces the number of state-funded learning improvement days from two to one for the 2009-10 school year and thereafter, pursuant to section 503(7) of the 2009-11 State Biennial Operating Appropriations Act, ESHB 1244. A "housekeeping" update adds program 34, middle school career and technical education - state, to the programs where funding for learning improvement days applies.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-950, 392-140-956, 392-140-961, and 392-140-962.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

Adopted under notice filed as WSR 09-15-100 on July 15, 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 0.

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

Randy I. Dorn  
State Superintendent

AMENDATORY SECTION (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-950 Learning improvement days—Applicable provisions.** The provisions of WAC 392-140-950 through 392-140-967 govern state funding for (~~up to three~~) learning improvement days for certificated instructional staff (~~in the 2001-02 school year and up to two days in the 2002-03 school year and thereafter~~). The authority for WAC 392-140-950 through 392-140-967 is the state Biennial Operating Appropriations Act and RCW 28A.150.290(1).

AMENDATORY SECTION (Amending WSR 01-08-048, filed 3/30/01, effective 4/30/01)

**WAC 392-140-956 Learning improvement days—Other definitions.** As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

01 Basic Education  
21 Special Education-Supplemental-State  
31 Vocational-Basic-State  
34 Middle School Career and Technical Education-State  
45 Skills Center-Basic-State  
55 Learning Assistance Program-State  
65 Transitional Bilingual-State  
74 Highly Capable  
97 District-wide Support

(5) "State institutional education programs" means the following programs:

26 Special Education-Institutions-State  
56 State Institutions, Centers, and Homes-Delinquent

AMENDATORY SECTION (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-961 Learning improvement days—Determination of the number of funded learning improvement days in the 2001-02 school year and thereaf-**

**ter.** The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district for the 2001-02 school year and for each school year thereafter as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the programs.

(b) For each employee, subtract one hundred eighty days from the number of days reported in the base contract.

(c)(i) For the 2001-02 school year, take the lesser of three days or the result of (b) of this subsection but not less than zero.

(ii) For the 2002-03 through 2008-09 school years ~~((and thereafter))~~, take the lesser of two days or the result of (b) of this subsection but not less than zero.

(iii) For the 2009-10 school year and thereafter, take the lesser of one day or the result of (b) of this subsection but not less than zero.

(d) Sum the number of days determined for all employees pursuant to (b) and (c) of this subsection.

(e) Divide the result of (d) of this subsection by the number of employees and round to two decimal places.

(f) The result is the number of funded learning improvement days for the district.

(3) After the close of the school year, the superintendent shall fund the lesser of:

(a) The number of days determined pursuant to subsection (2) of this section; or

(b) The number of days reported by the district pursuant to WAC 392-140-967.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days.** Using the number of learning improvement days determined pursuant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document ~~((12E))~~ 2 shall be reduced pro rata for any district with less than three learning improvement days in the 2001-02 school year, or less than two learning improvement days in the 2002-03 through 2008-09 school years, or less than one learning improvement day in the 2009-10 school year and thereafter in selected state-funded programs.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allo-

cation per pupil for three learning improvement days in the 2001-02 school year ~~((and))~~, for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent shall be reduced pro rata for any district with fewer learning improvement days in selected state-funded programs.

(4) For state institutional education programs the salary allocation for three learning improvement days in the 2001-02 school year ~~((and))~~, for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent shall be reduced pro rata for any district with fewer learning improvement days in state institutional education programs. Educational service districts or contractors operating state-funded institutional education programs shall be eligible for learning improvement day funding in the same manner as school districts.

(5) Allocations for learning improvement days are subject to adjustment or recovery based on findings of the Washington state auditor and chapters 392-115 and 392-117 WAC.

## WSR 09-19-051

### PERMANENT RULES

### GAMBLING COMMISSION

[Order 660—Filed September 11, 2009, 12:11 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: Allows player-supported jackpot (PSJ) funds to be transferred into the PSJ account. Currently, PSJ funds must be directly deposited into a separate PSJ bank account.

The petitioner states that bank transfers post immediately to the PSJ bank account which means there is no lag time waiting for deposits to clear. With transactions posted immediately, it's simple to compare the bank account balance to the PSJ accrual balance. Generally, only accounting staff have the ability to do bank transfers, and the cage makes deposits, so transfers are done by more experienced staff.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-400.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-15-078 on July 13, 2009.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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



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

Date Adopted: September 11, 2009.

Michelle M. Pardee  
Rules Coordinator

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

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

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

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

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

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

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

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

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

#### WSR 09-19-052

##### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 663—Filed September 11, 2009, 12:11 p.m., effective October 12, 2009]

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

Purpose: Implements EHB 1053, which increases the maximum price a raffle ticket can be sold for from \$25 to \$100. This law became effective July 26, 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 230-11-014.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-15-073 on July 13, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 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 11, 2009.

Michelle M. Pardee  
Acting Rules Coordinator

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

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

#### WSR 09-19-053

##### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 662—Filed September 11, 2009, 12:11 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: This allows individuals (for example, card dealers, distributor representatives, bingo managers, etc.) to report name changes thirty days after the effective date of the change. Previously, they had to report a name change thirty days before the change. Individuals are unable to submit proof of a name change until after their name is legally changed (for example, divorce or marriage). Organizations and businesses would still be required to request a name change thirty days before the effective date of the change.

Citation of Existing Rules Affected by this Order: Amending WAC 230-06-095.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-15-077 on July 13, 2009.

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

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

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

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

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

Date Adopted: September 11, 2009.

Michelle M. Pardee  
Acting Rules Coordinator

## Chapter 172-191 WAC

### STUDENT EDUCATION RECORDS

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

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

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

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

#### WSR 09-19-064

#### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed September 14, 2009, 9:30 a.m., effective October 15, 2009]

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

Purpose: Repealing chapter 172-190 WAC and adopting chapter 172-191 WAC to revise Eastern Washington University (EWU) standards related to the student education records. These rules constitute a major revision in the content and organization of existing rules which are more easily implemented by repealing the existing chapter and adopting the new chapter.

Citation of Existing Rules Affected by this Order: Repealing chapter 172-190 WAC.

Statutory Authority for Adoption: RCW 28B.35.-120(12).

Adopted under notice filed as WSR 09-16-114 on August 4, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 11, Amended 0, Repealed 11; 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 11, Amended 0, Repealed 11.

Number of Sections Adopted Using Negotiated Rule Making: New 11, Amended 0, Repealed 11; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 11, 2009.

Trent Lutey  
University Policy Administrator

#### NEW SECTION

**WAC 172-191-010 Purpose.** The purpose of this chapter is to establish rules and procedures to comply with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA) 20 U.S.C. Sec. 1232g. FERPA provides students with the following rights:

(1) The right to inspect and review their education records;

(2) The right to seek amendment of their education records to correct information which they believe is inaccurate, misleading or otherwise in violation of student privacy rights;

(3) The right to consent to disclosure of personally identifiable information, except for disclosure to school officials with a legitimate educational interest and except to the extent FERPA authorizes disclosure without consent; and

(4) The right to be informed annually of their rights under the act if they are currently in attendance.

The remainder of this chapter details how these rights shall be administered and protected for students of Eastern Washington University.

#### NEW SECTION

**WAC 172-191-020 Definitions.** The following definitions shall apply in interpreting these regulations:

"Attendance" includes, but is not limited to:

(a) Attendance in person or by paper correspondence, video conference, satellite, internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and

(b) The period during which a person is working under a work-study program.

"Biometric record" as used in the definition of personally identifiable information, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

"Education record" is defined as any record maintained by the institution or by a person acting for the institution that is directly related to the student.

(a) Education records include, but are not limited to:

(i) Official transcripts of courses taken and grades received; records relating to prior educational experience; and admission records;

(ii) Tuition and payment records;

(iii) Student disciplinary records;

(iv) Course records (e.g., examinations, term papers, essays, etc.); and

(v) Employment records based on student status are part of the student's education record (e.g., workstudy and graduate assistant teaching).

(b) Education records do not include the following:

(i) Records that are in the sole possession of the maker and are not accessible or revealed to any other person except

a temporary substitute for the maker of the record (e.g., private advising notes);

(ii) Law enforcement records created by Eastern Washington University campus police for the purposes of law enforcement, except that records created by another university department remain education records while in the possession of university police;

(iii) Employment records that are maintained in the normal course of business relating exclusively to the individual in that person's capacity as an employee and are not available for any other purpose;

(iv) Health care records on a student that are created or maintained by a health care provider or health care facility, including, but not limited to, a physician, psychiatrist, psychologist or paraprofessional acting in a professional capacity or assisting in connection with the treatment of the student and disclosed only to those individuals providing treatment or a health care provider of the student's choice (see also chapter 70.02 RCW);

(v) Records that only contain information about an individual after he or she is no longer a student at that agency or institution and that are not directly related to the individual's attendance as a student (e.g., alumni records); and

(vi) Grades on peer-graded papers before they are collected and recorded by a faculty member.

"Parent" is defined as a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

"Personally identifiable information" includes, but is not limited to, the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier such as the student's Social Security number or student number; student's date of birth, student's place of birth, student's mother's maiden name; biometric record, or other information that alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the university reasonably believes knows the identity of the student to whom the education record relates.

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

"Student" is defined as any person who is or has been in attendance at Eastern Washington University for whom the university maintains educational records.

"Student net ID" means a unique identifier that allows students to use the university network domain.

#### NEW SECTION

##### **WAC 172-191-030 Annual notification of rights.**

Eastern Washington University will provide students, who are currently attending, annual notification of their rights as required by the Family Educational Rights and Privacy Act. Notice will be provided through university catalogs, quarterly course announcements, or other publications and media that the university deems appropriate. Copies of the univer-

sity rules are available through the Washington Administrative Code. The university will make copies available to students, if requested. At a minimum, annual notification will include the following information:

(1) Rights and procedures related to inspection, review, and requests to amend education records;

(2) Rights to consent to disclosure of personally identifiable information contained in student records, except to the extent that such disclosure is legally authorized without consent;

(3) Rights to file a complaint with the department of education concerning alleged failures of the institution to comply with FERPA; and

(4) University policies related to disclosure of education records to school officials with a legitimate educational interest.

#### NEW SECTION

##### **WAC 172-191-040 Right of review and inspection.**

Any student shall have a right, subject to the limitations described below, to inspect and review his or her education records maintained by the university.

(1) The university may require proof of identification such as: A driver's license; university student identification card; or other photographic identification.

(2) The university will comply with a request for access to education records within a reasonable period of time, but not more than forty-five days after it has received the request.

(3) Restrictions:

(a) Financial records of the parents of a student or any information contained therein shall not be made available to the student.

(b) Confidential letters and statements of recommendation, which were placed in a student's education records before January 1, 1975, shall not be made available to the student unless such letters or statements were used for purposes other than those for which they were specifically intended.

(c) Confidential letters and statements of recommendation, which were placed in a student's education records on or after January 1, 1975, shall not be made available to the student if:

(i) The student has waived his or her right to inspect and review those items in accordance with subsection (4) of this section; and

(ii) The letters and statements involved relate to the student's:

(A) Admission to any educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(d) The right to review and inspect does not include records made, maintained, or used by the institution that do not constitute an education record.

(e) In the case of any education records relating to a student which also include information regarding another student or students, the right to review and respect is limited to the information related to the student making the request. Responsible university officials will redact any personally identifiable information relating to any other student(s).

(4) Waivers: A student or a person applying for admission may waive his/her right of access to confidential statements described in subsection (3)(c)(ii) of this section.

(a) Such waivers may not be required as a condition for admission or receipt of a service or benefit from the institution.

(b) Such waivers shall apply to recommendations only if:

(i) The student is, upon request, notified of the names of all persons making confidential recommendations; and

(ii) Such recommendations are used solely for the purpose for which they were specifically intended.

(c) Waivers must be in writing and signed and dated by the student.

(d) Waivers may be revoked, in writing, by the student; however, the revocation will be effective only for confidential statements or records dated after the revocation.

(5) Destruction of records: Student education records may be destroyed in accordance with the university's approved retention schedule. In no case will any record which is requested by a student for review in accordance with these regulations be removed or destroyed prior to final disposition of the records request.

#### NEW SECTION

**WAC 172-191-050 Obtaining copies of records.** Students may obtain copies of their education records. The office of the registrar is the only office which may issue an official transcript of the student's academic record. Charges for copies shall not exceed the cost normally charged by the university copy center (except in cases where charges have previously been approved for certain specified services).

(1) The university may refuse to provide copies of education records including transcripts and diplomas in the following circumstances:

(a) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected;

(b) If the student has outstanding debts owed to the university, so that the university may facilitate collection of such debts; and/or

(c) If disciplinary action is pending or sanctions are not completed.

(2) The university must provide copies of education records, subject to the provisions of subsection (1) of this section, in the following circumstances:

(a) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(b) When records are released pursuant to a student's consent and the student requests copies; and/or

(c) When the records are transferred to another educational institution where the student seeks to attend or intends to enroll and the student requests copies.

#### NEW SECTION

**WAC 172-191-060 Amendment of records.** If a student believes his/her education records contain information that is inaccurate, misleading or in violation of the student's rights of privacy, the student may ask the university to amend the record. Requests for amendment must be submitted to the

registrar's office in writing. The registrar will review the request and may consult other university personnel who participated in creation of the record to determine whether to grant the request for amendment.

(1) If the university decides to grant the student's request, the university shall amend the education record and the registrar will inform the student of the action taken. Such notification will be in writing and will be made within a reasonable time.

(2) If the university decides not to amend the education record as requested, the registrar will notify the student in writing within a reasonable time after receiving the request for amendment. Notification will also inform the student of his/her right to a hearing as detailed in WAC 172-191-070.

(3) If a student wants a hearing, the student must make a written request within ninety days of the date of the denial. The request shall be submitted to the registrar and must identify why the student believes the information contained in the education record(s) is inaccurate, misleading, or in violation of the privacy rights of the student.

#### NEW SECTION

**WAC 172-191-070 Hearings.** Following receipt of a request for a hearing under WAC 172-191-060, the registrar will schedule the hearing. The associate vice-president for enrollment services or his/her designee will act as the hearing officer and will provide the student with written notice of the hearing's date, time and place reasonably in advance of the hearing. The student will be provided an opportunity to present evidence relevant to the contested part of the education record. The student may, at his/her own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney.

(1) The associate vice-president for enrollment services or his/her designee will render his/her decision in writing within a reasonable period of time following the hearing. The decision of the officer shall be the university's final decision. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision. The associate vice-president for enrollment services or his/her designee cannot have a direct interest in the outcome of the hearing.

(2) If the associate vice-president for enrollment services or his/her designee determines that the record is inaccurate, misleading, or in violation of the privacy rights of the student and grants the student's appeal, the associate vice-president for enrollment services or his/her designee will amend the education records of the student accordingly and inform the student in writing of his/her decision and of the amendment.

(3) If the associate vice-president for enrollment services or his/her designee determines that the record is accurate, not misleading and not in violation of the privacy rights of the student and denies the student's appeal, the associate vice-president for enrollment services or his/her designee shall notify the student of his/her decision in writing and shall inform them of the right to place a statement in the record commenting on the contested information in the record or stating why he/she disagrees with the decision of the university or both. The university must maintain the statement with

the contested part of the record for as long as the record is maintained and must disclose the statement whenever it discloses the portion of the record to which the statement relates.

(4) The appropriateness of official academic grades is not subject to review pursuant to this process.

#### NEW SECTION

**WAC 172-191-080 Disclosure of education records requiring consent.** Students shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records, except as provided by WAC 172-191-090. The written consent must:

- (1) Specify the records that may be disclosed;
- (2) State the purpose of the disclosure; and
- (3) Identify the party or class of parties to whom the disclosure may be made.

#### NEW SECTION

**WAC 172-191-090 Disclosures authorized without consent.** The university will use reasonable methods to identify and authenticate the identity of persons to whom it discloses personally identifiable information from education records and will not permit the access to or the release of education records or personally identifiable information other than "directory information" as defined in WAC 172-191-100, without the student's consent, to any party other than the following:

(1) Agencies or organizations requesting information in connection with a student's application for, or receipt of, financial aid if the information is necessary to:

- (a) Determine eligibility for financial aid;
- (b) Determine the amount of financial aid;
- (c) Determine the conditions of financial aid; or
- (d) Enforce the terms and conditions of financial aid.

(2) Authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or state or local authorities requiring access to education records, in connection with the audit or evaluation of a federal or state supported education program or in connection with the enforcement of or compliance with federal legal requirements which relate to such a program.

(3) School officials who have a legitimate educational interest in the records.

(a) A "school official" is:

(i) A person employed by the university in an administrative, supervisory, academic, research, support staff, law enforcement, or health care service position;

(ii) A person serving on the university's board of trustees;

(iii) A student serving on an official university committee or assisting another school official in fulfilling their professional responsibilities (examples include, but are not limited to, service on a disciplinary committee and work study students); and

(iv) A contractor, consultant, volunteer or other party to whom the university has outsourced to provide a service and/or to assist another school official in conducting official

business (examples include, but are not limited to, an attorney, an auditor, a collection agency, or the National Student Clearinghouse, an agency which acts as a clearinghouse for student loan deferment reporting).

(b) "Legitimate educational interest" exists if the information requested by the school official is necessary for the official to perform a task specified in his/her position description or contract agreement including: The performance of a task related to a student's education; the performance of a task related to the discipline of a student; the provision of a service or benefit relating to the student or student's family, such as a health education, counseling, advising, student employment, financial aid, or other student service related assistance; the maintenance of the safety and security of the campus; and/or the provision of legal assistance regarding a student matter.

(4) Parent of a minor student or a nonminor dependent student, as defined in the Internal Revenue Code and upon submission of a copy of the most recent Internal Revenue Service annual tax return showing the student as a dependent.

(5) Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

(6) Organizations conducting studies for, or on behalf of, the university for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction, if the studies are conducted in a manner that will not permit the personal identification of students or their parents by persons other than representatives of such organizations who have legitimate interests in the information; such information will be destroyed when no longer needed for the purposes for which it was provided; and the university enters into a written agreement with the organization that specifies the purpose, scope and duration of the study and the information to be disclosed, requires the organization to use personally identifiable information from education records only to meet the purpose(s) of the study as stated in the written agreement; and requires the organization to conduct the study in a manner that does not permit personal identification of parents and students to anyone other than representatives of the organization with legitimate interests, and requires the organization to destroy or return all personally identifiable information within a specified time period when it is no longer needed for the purposes for which the study was conducted.

(7) Accrediting organizations to carry out accreditation functions.

(8) Persons or entities designated by a judicial order or lawfully issued subpoena, upon the condition that the university makes a reasonable effort to notify the student of all such orders or subpoenas and of its intent to release records in advance of compliance with the order or subpoena, unless:

(a) It is a federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(b) A subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the

existence or the contents of the subpoena or the information furnished in response not be disclosed; or

(c) An ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b (g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(9) Appropriate persons, including parents of an eligible student, in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(10) Persons who request information that is designated as "directory information."

(11) Victims alleging a crime of violence or a nonforcible sex offense, the final results of a disciplinary proceeding conducted by the university after October 7, 1998, with respect to the alleged crime or offense. Disclosure is permitted regardless of whether the university concluded a violation was committed.

(12) To others, the final results of the disciplinary proceeding when, at its discretion the university believes that disclosure will serve a legitimate educational interest, and determines through a disciplinary proceeding conducted under its student conduct code that the alleged student perpetrator committed a crime of violence or a nonforcible sexual offense that is a violation of the university's rules or policies with respect to such crime or offense. For purposes of this subsection, "final results" means the name of the student perpetrator, the violation committed, and any sanction imposed by the university on that student. Names of other students involved in the violation, such as a victim or witness, will be released only with the written consent of those students.

(13) Parent of a student of the university regarding the student's violation of any federal, state, or local law, or of any rule or policy of the university, governing the use of alcohol or controlled substance, if the student is under the age of twenty-one, and the university had determined that the student has committed a disciplinary violation with respect to that use or possession.

(14) When a parent or eligible student initiates legal action against the university or when the university initiates legal action against the parent or eligible student, the university may disclose to the court any education records of the student that are relevant to the legal action.

(15) Students upon providing evidence sufficient to demonstrate that the requesting individual is in fact the student to whom the records relate such as: A driver's license; a university student identification card; or other photographic identification.

(16) For deceased students, members of the family or other persons with the written approval of the family or representatives of the estate. The request for education records must be accompanied by a copy of the death certificate or obituary. Absent written approval from the family or representative of the estate, only directory information will be disclosed to persons upon request.

(17) The disclosure concerns sex offenders and other offenders required to register under Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,

and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable federal guidelines.

(18) The disclosure involves records or information from which all personally identifiable information has been removed.

NEW SECTION

**WAC 172-191-100 Directory information.** Directory information is defined to include: Student's name, address, e-mail address, student net identification number, telephone number, date and place of birth, participation in officially recognized activities and sports, weight, height and birth dates of athletic team members; dates of attendance at the university, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

The university may release "directory information" unless the student files a written request restricting the disclosure of the information. A student's election to opt out of directory information disclosures does not prevent the university from disclosing or requiring a student to disclose his/her name, identifier, or university e-mail address in a class in which the student is enrolled.

NEW SECTION

**WAC 172-191-110 Right to file a complaint.** Students may file a written complaint with the Family Policy Compliance Office of the U.S. Department of Education concerning alleged failures by the university to comply with the requirements of the Family Educational Rights and Privacy Act or its implementing regulations.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 172-190-010	Purpose.
WAC 172-190-020	Definitions.
WAC 172-190-030	Right of inspection.
WAC 172-190-035	Availability of directory information.
WAC 172-190-040	Access permitted to university and certain other officials without consent.
WAC 172-190-050	Distribution of information to others.
WAC 172-190-060	Notice of rights given under Family Educational Rights and Privacy Act of 1974.
WAC 172-190-070	Requests for access to student records.
WAC 172-190-080	Determination regarding records.

WAC 172-190-090	Review proceeding available.
WAC 172-190-100	Right of students to register objections.

Type of Operation	Annual Fee
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

**WSR 09-19-067  
PERMANENT RULES  
DEPARTMENT OF HEALTH**

[Filed September 14, 2009, 11:05 a.m., effective October 15, 2009]

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

Purpose: To equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment follows the annual redistribution formula which is based on the number of tests done in the previous year. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck, and ensures toxic shellfish do not reach consumers.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 09-15-187 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 14, 2009.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 08-13-067, filed 6/13/08, effective 7/14/08)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	\$(( <del>12,094</del> )) <u>10,452</u>
Jamestown S'Klallam Tribe	\$(( <del>4,682</del> )) <u>2,503</u>
Lower Elwah Klallam Tribe	\$(( <del>2,991</del> )) <u>2,208</u>

Harvester	Fee
Lummi Nation	\$((390)) 147
Nisqually Indian Tribe	\$((3,121)) 3,091
Port Gamble S'Klallam Tribe	\$((3,121)) 4,416
Puyallup Tribe of Indians	\$((8,453)) 8,244
Skokomish Indian Tribe	\$((260)) 1,619
Squaxin Island Tribe	\$((4,151)) 1,767
Suquamish Tribe	\$((13,665)) 21,198
Swinomish Tribe	\$((390)) 589
Tulalip Tribe	\$((4,552)) 1,619
((Discovery Bay Shellfish)) <u>Washington Shell Fish, Inc.</u>	\$((130)) 147

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 09-19-068**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Pharmacy)

[Filed September 14, 2009, 11:19 a.m., effective October 15, 2009]

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

Purpose: The purpose of the rule change is to correct a typographical error in the code of federal regulation number referenced in WAC 246-869-090 (2)(e) and makes a technical correction replacing the word "doctor" with "prescriber."

Citation of Existing Rules Affected by this Order: Amending WAC 246-869-090.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: RCW 69.41.050.

Adopted under notice filed as WSR 09-06-018 on February 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 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: July 30, 2009.

Gary G. Harris, Chair  
Board of Pharmacy

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

**WAC 246-869-090 Prescription transfers.** The transfer of original prescription information for a noncontrolled substance legend drug for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

(1) The transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(a) Record in the patient medication record system that a copy has been issued.

(b) Record in the patient medication record system the name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information.

(2) The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(a) Write the word "TRANSFER" on the face of the transferred prescription.

(b) Provide all information required to be on the prescription - patient's name and address; ((doctor's)) prescriber's name and address, and also include:

(i) Date of issuance of original prescription.

(ii) Number of valid refills remaining and date of last refill.

(iii) The pharmacy's name, address, and original prescription number from which the prescription information was transferred.

(iv) Name of transferor pharmacist.

(c) Both the original and transferred prescription must be maintained as if they were original prescriptions.

(d) A transferred prescription may not be refilled after one year from the date the original was issued.

(e) The above subsections apply to the transfer of prescription information for noncontrolled substances. The transfer of controlled substance prescription information must conform to the requirements of 21 CFR ((1306.26)) 1306.25.

(3) When a prescription is transferred, no further refills shall be issued by the transferring pharmacy.

(4) If two or more pharmacies utilize a common electronic data base for prescription recordkeeping, prescriptions may be refilled at any of these pharmacies as long as there is provided an audit trail which documents the location of each filling and provisions are made to assure that the number of authorized refills are not exceeded.



**WSR 09-19-069**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed September 14, 2009, 2:41 p.m., effective October 15, 2009]

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

Purpose: WAC 458-16-270 explains the property tax exemption available to nonprofit schools and colleges, and for not-for-profit foundations that support institutions of higher education, as authorized in RCW 84.36.050. The rule has been substantially revised and updated to recognize the legislative changes that were enacted in chapter 226, Laws of 2006 (SHB 2804). This legislation expanded the exemption for nonprofit schools and colleges to include specified use of the property by parties other than the school or college.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-270 Schools and colleges.

Statutory Authority for Adoption: RCW 84.36.865, 84.-36.040.

Other Authority: RCW 84.36.050.

Adopted under notice filed as WSR 09-14-063 on June 29, 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 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 14, 2009.

Alan R. Lynn  
Rules Coordinator

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

**WAC 458-16-270 Schools and colleges.** (1) **Introduction.** This ~~((rule))~~ section explains the two property tax exemptions available under the provisions of RCW 84.36.-050. The first exemption applies to property owned ((by)) or used by or for a nonprofit school or college ((and to)). The second exemption is for property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016, that is leased to and used by the institution. Nonprofit schools, colleges, and not-for-profit foundations seeking a property tax exemption under RCW 84.36.050 must also comply with the relevant requirements of RCW 84.36.805 and 84.36.840. (See subsection (9) of this section.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) They have a qualified or certified faculty;

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

(D) They have an attendance policy and requirement;

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

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

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

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

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

(i) Teaches at a school or college; and

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

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

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

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

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

~~would be nonexistent except for the existence of the school or college))~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) ~~The income derived from the property;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) If exempt property is used by students, alumni, faculty, staff, or other third parties in a manner consistent with the educational, social, or athletic programs of the school or college, including property used for related administrative

and support functions, and not for pecuniary gain or to promote business activities, then the property remains exempt.

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

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

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

~~(7) ((Additional requirements. Any organization, association, corporation, or foundation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption under RCW 84.36.050.))~~ **Examples of uses that do not nullify the**

**exemption.** In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that do not nullify the tax exempt status of property owned or used by or for a school or college. The following examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances. In the following examples, as long as any rent or donation associated with the use does not result in net income to the school or college, the exemption is not affected.

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

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

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

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

(e) Exempt property, such as student housing, is used for purposes of recruiting prospective students. Exempt school or college facilities, when not being used by currently

enrolled students, are offered by the school or college to third parties for educational programs consistent with the educational purposes of the school or college. Such uses are consistent with the educational programs of the school or college and the property remains exempt.

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

(g) Exempt property is used by a bank or credit union in a school or college student orientation program of limited duration and not more than one time each year, through which students receive information from a variety of local businesses about services that they may need while attending a school or college. This is considered to be a social or educational program of the school or college and is not a disqualifying use.

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

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

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

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

**(9) Additional requirements.**

(a) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of

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

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

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

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

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

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

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

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

### WSR 09-19-071

#### PERMANENT RULES

#### WASHINGTON STATE UNIVERSITY

[Filed September 15, 2009, 2:59 p.m., effective October 16, 2009]

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

Purpose: The university's rules regarding the small works roster are being updated.

Citation of Existing Rules Affected by this Order: Amending WAC 504-50-010, 504-50-020, 504-50-050, 504-50-060, 504-50-070, and 504-50-080.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 09-13-059 on June 15, 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 5, Repealed 0.

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

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

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

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

Date Adopted: September 4, 2009.

Ralph T. Jenks, Director  
Procedures, Records, and Forms  
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

**WAC 504-50-010 Purpose and authority.** This chapter of the Washington Administrative Code is adopted pursuant to RCW 39.04.155, authorizing Washington State University to adopt procedures to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property in lieu of other procedures for such work with an estimated cost of ~~((two))~~ three hundred thousand dollars ~~(((\$200,000)))~~ (\$300,000) or less. The University, in establishing a small works roster, shall use the procedures set forth in this chapter.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

**WAC 504-50-020 Project construction cost.** Whenever the estimated cost of any construction... or improvement of real property does not exceed ~~((two))~~ three hundred thousand dollars ~~(((\$200,000)))~~ (\$300,000), the University is authorized to use the small works roster in lieu of public advertisement for bids. In the event that the legislature further increases the small works roster limit, the University is authorized to use the small works roster for any projects up to the legislatively authorized limit. No project shall be broken into units or phases for the purpose of avoiding the maximum dollar amount of a contract that may be met using the small works roster.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

**WAC 504-50-050 Contractors application form—Information required.** In response to the notifications above, or at any time, contractors desiring to be included on a small works roster established by Washington State University, may submit a completed application in a format prescribed by the director, department of facilities operations. Copies of the form may be obtained from the department of facilities operations and will contain the following information:

- (1) Name of contracting firm, including designation as corporation, partnership, sole proprietorship, or otherwise;
- (2) Address of contracting firm;
- (3) Telephone number;
- (4) Fax number;
- (5) E-mail address;
- (6) State contractor's license number;
- (7) Name of the owner or chief operating officer;
- (8) State of Washington department of revenue tax number;
- (9) Indication of type of construction firm by categories enumerated on the form;
- (10) An indication of those counties, enumerated on the form, in which the contractor is interested in being considered for projects;
- (11) Indication of whether contractor is certified as a minority or women's business enterprise pursuant to chapter 326-20 WAC;
- (12) Three references of satisfactorily completed contracts of a value of not less than twenty-five thousand dollars within the past two years.

Upon receipt of the application, the University shall evaluate the qualifications of the firm for inclusion on the small works roster, ~~((in accordance with WAC 504-XX-050,))~~ enter the information set forth therein into its small works roster, and send a copy of the information which is entered to the applicant contractor. Contractors should not consider themselves to be enrolled in a small works roster until they have received this verification.

It is the responsibility of the contractor to notify the agency of any incorrect information set forth on the notice of verification and to notify the agency of any change in the information set forth in its application, as such changes may occur from time to time.

**AMENDATORY SECTION** (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

**WAC 504-50-060 Qualification requirements.** To qualify for placement on the Washington State University small works roster, contractors must demonstrate the following in experience and qualifications:

- (1) Be a licensed contractor in the state of Washington;
- (2) Have successfully completed at least three projects, each with a value of not less than twenty-five thousand dollars within the past two years;
- (3) ~~((Have some experience in public works contracts;~~
- (4)) Have two years experience in the area of expertise for which listing is sought.

**AMENDATORY SECTION** (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

**WAC 504-50-070 Denial or removal of contractors from small works roster—Reasons, notice, and hearing.** A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any of the following reasons:

- (1) The information set forth in the contractor's application is not accurate;

- (2) The contractor fails to notify the University of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of such change;

- (3) The contractor has failed to respond to ~~((three consecutive))~~ five solicitations for bids on jobs offered through the small works roster;

- (4) The contractor's past performance has demonstrated the firm not to be a responsible bidder as defined in RCW ~~((43-19-1911))~~ 39.04.350;

- (5) The contractor fails to complete and return to the University any periodic update submitted by the University to determine the contractor's ongoing interest in maintaining its placement on the small works roster.

(6) Whenever the University believes that grounds exist for denying an application for placement on a small works roster, or removing the name of a contractor from a small works roster, notice of said grounds shall be given to the contractor by first class mail. If the contractor fails to object or request a hearing within twenty days after the mailing of said notice, then the denial or removal shall be made effective.

**AMENDATORY SECTION** (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

**WAC 504-50-080 Procedures for use.** When using a Small Works Roster, the University shall obtain telephone, written, or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW ~~((43-19-1911))~~ 39.04.350, as follows:

- (1) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. In those cases where there are fewer ~~((that))~~ than five contractors on the appropriate small works roster, quotations will be invited from all contractors on the roster.

- (2) If the estimated cost of the work is from one hundred fifty thousand dollars to ~~((two))~~ three hundred thousand dollars, the University may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The University has the sole option of determining whether this notice to the remaining contractors is made by:

(a) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;

(b) Mailing a notice to these contractors; or

(c) Sending a notice to these contractors by facsimile or other electronic means.

(3) For purposes of this resolution, "equitably distribute" means that the University may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the University representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

(4) A written record shall be made by the University representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(5) The University shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the University may call for new bids. ~~((In addition to price, the University shall take into account the following:~~

~~(a) The ability, capacity, and skill of the bidder to perform the contract;~~

~~(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;~~

~~(c) Whether the bidder can perform the contract within the time specified by the University;~~

~~(d) The quality of the bidder's performance of previous contracts or services;~~

~~(e) The previous and existing compliance by the bidder with laws relating to the contract or services;~~

~~(f) Such other information as may be secured having a bearing on the decision to award the contract.))~~

**WSR 09-19-073**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed September 16, 2009, 6:58 a.m., effective October 17, 2009]

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

Purpose: The amendments to chapter 139-37 WAC are being proposed to include bail bond recovery agents and simple language updates.

In addition, the title of chapter 139-37 WAC has [previously] been changed from "Firearms certification—Instructors—Records" to "**Certified firearms instructors—Private security, private investigators, and bail bond recovery agents.**"

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 09-16-138 on August 5, 2009.

Changes Other than Editing from Proposed to Adopted Version: Removed WAC 139-37-005 (1)(b), which read "Pays an administrative fee of twenty-five dollars; and".

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 2, Repealed 0.

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

Date Adopted: September 9, 2009.

Sonja Hirsch  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-02-042, filed 12/24/91, effective 1/24/92)

**WAC 139-37-005 Certified firearms ((certification)) instructors—((Certified instructors)) Requirements.** (1) For the purposes of chapters 139-30 and 139-35 WAC, "certified firearms instructor" means any individual who:

(a) Applies for certified firearms instructor certification to the commission on a form prescribed by the commission for such purpose; and

(b) ~~((Pays an administrative fee of twenty-five dollars; and~~

~~(e))) Satisfactorily completes an instructor orientation course regarding the requirements of instruction and testing for firearms certification of private security guards ((and)), private ((detectives)) investigators, and bail bond recovery agents; and~~

~~((i) Documents satisfactory completion of a firearms instructor course approved by the commission; or~~

~~(ii) Satisfactorily completes a firearms instructor course conducted by the commission; and~~

~~(d) Meets one of the following:~~

~~(i) Is currently employed as a full-time commissioned law enforcement officer; or~~

~~(ii) Is currently licensed as a private security guard or private detective; or~~

~~(iii) Submits a set of fingerprints to the commission for the purposes of background investigation; and~~

~~(e))) (c) Has not been convicted of a gross misdemeanor or felony; and has not been convicted of a misdemeanor involving the use or threatened use of a firearm; and has not committed any act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a crime or not.~~

(2) A certified firearms instructor is authorized to conduct an approved program of instruction and testing for firearms certification of private security guards ((and)), private ((detectives)) investigators, and bail bond recovery agents. The certified firearms instructor shall not be considered an employee, agent, contractor, or representative of the commission.

(3) The commission may monitor and review the program of instruction and testing conducted by a certified firearms instructor for the purpose of determining compliance with the commission's program materials and standards.

(4) Certified firearms instructor status may be revoked by the commission for cause, including, but not limited to:

(a) Misrepresentation of facts on the initial application for certified firearms instructor certification; or

(b) Conviction of a gross misdemeanor or felony; or conviction of a misdemeanor involving the use or threatened use of a firearm; or the commission of any act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a crime or not; or

(c) Failure to conduct the armed private guard ~~((or))~~, armed private ~~((detective))~~ investigator, or bail bond recovery agent firearms certification/recertification program as prescribed by the commission; or

(d) Falsification of any documentation or score relating to the firearms certification/recertification program; or

(e) Unsafe firearms handling during the firearms certification/recertification process.

(5) The commission may require periodic instructor update training at its discretion, but no more frequently than once a year.

AMENDATORY SECTION (Amending WSR 92-02-042, filed 12/24/91, effective 1/24/92)

**WAC 139-37-010 Certified firearms ((certification)) instructors—Records.** (1) A master record of firearms certificate issuances by the commission to private security guards ~~((and))~~, private ~~((detectives))~~ investigators, and bail bond recovery agents shall be maintained by the commission.

(2) A master record of certified firearms instructors for purposes of chapters 139-30 and 139-35 WAC shall be maintained by the commission.

(3) The aforementioned records shall be accessible by any individual, organization, private security company, ~~((or))~~ private ~~((detective))~~ investigation agency, or bail bond recovery/bail bond agency making written inquiry to the commission ~~((at its administrative offices, P.O. Box 0905, Olympia WA 98504-0905))~~ to WSCJTC, Public Records Officer, 19010 1st Ave. S., Burien, WA 98148.

**WSR 09-19-074  
PERMANENT RULES  
APPLE COMMISSION**

[Filed September 16, 2009, 8:05 a.m., effective October 17, 2009]

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

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

Citation of Existing Rules Affected by this Order: Amending WAC 24-12-001, 24-12-010, 24-12-011, 24-12-012, 24-12-070, and 24-12-080.

Statutory Authority for Adoption: Chapters 15.24 and 34.05 RCW.

Adopted under notice filed as WSR 09-15-017 on July 6, 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 6, 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 6, Repealed 0.

Date Adopted: September 16, 2009.

Todd Fryhover  
President

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

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

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

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

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



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

DESCRIPTION OF CONTAINER	NET SHIPPING WEIGHT RANGE
Tray Carton	37-52 lbs.
Cell Carton	37-52 lbs.
1 Layer Carton AKA Euro Carton	10-15 lbs.
2 Layer Carton AKA Euro Carton	20-30 lbs.
3 Layer Carton AKA Euro Carton	30-40 lbs.
Euro Carton 1-3 Layers	10-45 lbs.
Master Carton (Bags in Box/Clamshell)	10-50 lbs.
Master Bin (Bags in Bin/Clam- shell)	300-600 lbs.
Bin (Loose/Jumble/Bulk)	500-900 lbs.
Loose Carton (Jumble/Bulk)	10-40 lbs.
Carton (2/3 Bushel)	25-35 lbs.
1/2 Carton	18-25 lbs.
1/3 Bushel Carton	10-15 lbs.
Overwrap Carton	30-40 lbs.

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

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

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

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

I HEREBY CERTIFY THAT:

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

.....  
Signature of Voter  
Name (print).....  
Date .....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## WSR 09-19-080

### PERMANENT RULES

### GAMBLING COMMISSION

[Order 661—Filed September 17, 2009, 8:04 a.m., effective October 18, 2009]

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

Purpose: This change restores the requirements for demonstrating significant progress for all charitable or nonprofits licensees, not just Groups IV and V. Making significant progress is required under RCW 9.46.0209.

Citation of Existing Rules Affected by this Order: Amending WAC 230-07-020.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-15-074 on July 13, 2009.

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

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

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

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

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

Date Adopted: September 11, 2009.

Michelle M. Pardee  
Acting Rules Coordinator

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

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

- (1) Complied with all requirements set forth in their bylaws and articles of incorporation; and
- (2) Actively engaged in providing services to the public or their members during the fiscal year under review, and the services directly relate to the stated purposes of the organization; and
- (3) Held elections to select officers at least once in the previous two years; and
- (4) Held a general membership meeting to conduct the business of the organization at least once in the previous two years; and
- (5) Used a substantial portion of the licensees' "available resources" for providing program services during the fiscal year under review. For purposes of this section, "available resources":
  - (a) Include the income generated by or from:
  - (i) The net of all activities used to raise funds, including net gambling income; and

- (ii) Grants, gifts, and contributions from private sources; and
  - (iii) Public support.
  - (b) Does not include:
    - (i) Funds generated in periods other than the fiscal year under review; or
    - (ii) Funds that are raised or contributed from outside the organization for purposes of purchasing land or capital assets or to endow future operations when those funds are specifically identified by the board or contributors as restricted and separately recorded in the organization's records; or
    - (iii) Net income from the sale of assets; or
    - (iv) Fees paid by members or the public to receive services or to participate in specific activities. (Example: Fees to attend a swimming lesson or event.) These fees must be classified as a reduction to both program service and supporting service expenses on a pro rata basis and as a reduction to resources available for providing services in the fiscal year. (Example: In the chart below, licensee X has revenue of five thousand dollars. They must calculate the pro rata reduction by adjusting the total by the percentages of support services, program services expenses, and functional expenses.)
- (6) This rule will be effective for fiscal years ending on or after December 31, 2009.

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

**WSR 09-19-082  
PERMANENT RULES  
GAMBLING COMMISSION**

[Order 659—Filed September 17, 2009, 11:21 a.m., effective October 18, 2009]

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

Purpose: New WAC 230-06-011 implements SSB 5040, to allow for the detention and identification of minors that gamble. Chapter 7.80 RCW, which is referred to in SSB 5040, requires agencies to adopt this type of rule. This law becomes effective July 26, 2009.

New WAC 230-06-012 implements subsection 4 of SSB 5040, which allows licensees to conduct in-house controlled purchase programs for purposes of employee training and employer self-compliance checks regarding minors that gamble. This law becomes effective July 26, 2009. The rule explains the approval process and requirements for conducting in-house controlled purchase programs.

Statutory Authority for Adoption: RCW 9.46.070.  
Adopted under notice filed as WSR 09-15-079 on July 13, 2009.

Changes Other than Editing from Proposed to Adopted Version: Removed requirement that the licensee must receive written confirmation from us that the notification was received prior to conducting the test and that the licensee provide written notification of test results to us within forty-eight hours after completing the test. Added that test results must be retained by licensee for one year after test date and photo identification with birth date of person used in the test must be kept.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: September 11, 2009.

Michelle M. Pardee  
Acting Rules Coordinator

#### NEW SECTION

**WAC 230-06-011 Detaining and identifying persons under eighteen years of age engaging in or attempting to engage in authorized gambling activities.** When issuing civil infractions under RCW 9.46.228, gambling commission special agents or peace officers may detain persons for a reasonable period of time and in a reasonable manner to determine the person's true identity and date of birth if the special agent or peace officer has reasonable grounds to believe that:

- (1) The person is under eighteen years of age; and
- (2) The person is, or has played or participated in, or is attempting or has attempted to play or participate in authorized gambling activities including, but not limited to, punch boards, pull-tabs, card games, or fund-raising events.

#### NEW SECTION

**WAC 230-06-012 Conducting underage compliance test programs with minors.** (1) Licensees may conduct in-house controlled purchase programs (underage compliance test programs) to test their employee's compliance with RCW 9.46.228 that makes it unlawful for any person under the age of eighteen to play punch boards, pull-tabs, card games, or participate in fund-raising events.

- (2) Licensees must:
  - (a) Have written procedures for conducting underage compliance test programs.
    - (i) Class F or house-banked card game licensees must include the procedures in their internal controls; or
    - (ii) Licensees not required to have internal controls must submit their procedures to us prior to conducting an underage compliance test and keep a copy of the procedures on the licensed business premises; and
    - (b) Provide employees a written description of the employer's underage compliance test program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding unauthorized persons engaging in gambling activities during an underage compliance test; and
    - (c) Provide written notification (letter, e-mail, or fax) to us before conducting the test. The notification must include:
      - (i) Licensee name; and
      - (ii) Date and time of test; and
      - (iii) Last name and first initial of the person used in the test; and

(iv) First and last name of the person supervising the person used in the test; and

(d) Maintain on the licensed business premises for at least one year, and produce upon request, the following information for each test conducted:

- (i) A copy of the photo identification, which must include the birth date, of the person used in the test; and
- (ii) The results; and
- (e) Only use underage persons who are sixteen or seventeen years old at the time of the test.

(3) Licensees with a minimum gambling age of twenty-one must follow the procedures in subsections (1) and (2) of this section, except for subsection (2)(e) of this section, if they use persons who are at least eighteen years of age but less than twenty-one years of age to conduct underage enforcement tests.

**WSR 09-19-084  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-215—Filed September 17, 2009, 4:10 p.m., effective October 18, 2009]

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

Purpose: In 2009, the Washington state legislature passed SHB 1778, which includes two new statutes authorizing the master hunter permit program. These statutes provide the cost for initial and renewal master hunter permits; they allow the department to conduct background checks on initial and renewal permit applicants; they give the department authority to suspend permits for specific reasons; and they allow the department to establish the program's requirements and curriculum. These proposed rules mirror the two statutes and provide the accountability standards for initial and renewal applicants. These rules also indicate the conditions and lengths of time for which a permit will be suspended. The effect of these rules will be to ensure that master hunters are ethical hunters and can serve as highly regarded role models for the general hunting community.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-073.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 09-14-132 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: In subsection (2): Changed the language so the first sentence reads, "The master hunter permit program emphasizes safe, (~~lawful, and~~) ethical, responsible, and lawful hunting practices." This is so that the wording parallels the wording in the new statute.

In subsections (3)(b) and (8)(b): Changed "trespassing" to "criminal trespass" because the correct term for the crime is "criminal trespass."

In subsections (3)(d) and (8)(d): Added "in Washington or" to clarify that having a current revocation of a hunting or fishing license or a current suspension of hunting or fishing privileges in another state, including Washington, will pre-

clude an initial applicant from entry into the master hunter permit program.

In subsection (7): Changed "are entitled to participate" to "may participate," because the department did not want to give the impression that we bestow entitlements on anyone.

In subsection (9): Changed the language so it reads, "an infraction under a chapter 77.15 RCW or the department's rules infraction shall have ..." to clarify that a master hunter will have his permit suspended for two years if he pays the fine on, or is found to have committed, an infraction under chapter 77.15 RCW or the department's rules. This makes the language conform to the statute's language.

In subsection (15): Changed "hunt or actively assist in a hunt restricted to master hunters" to "hunt ~~or actively assist~~ in a hunt restricted to master hunters." It would be too difficult to define "or actively assist." The definition of "hunt" is already included in this subsection.

In subsection (15): Added, "Master hunters who have been issued a disabled hunter permit by the department may only hunt with a designated hunter companion who has been admitted into the master hunter permit program and maintained the requirements under this section." This clarifies the law and reaffirms the master hunter advisory group's role in assisting disabled master hunters with locating certified master hunters to serve as their designated hunting companions.

In subsection (15): Changed "Violation" to "Violations" because the plural is more appropriate.

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: September 11, 2009.

Susan Yeager  
for Miranda Wecker, Chair  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending WSR 08-03-088, filed 1/16/08, effective 2/16/08)

**WAC 232-12-073 Master hunter permit program.** (1) In order to effectively manage wildlife in areas or at times when a higher proficiency and demonstrated skill level are needed for resource protection or public safety, the department establishes the master hunter permit program.

(2) The master hunter permit program emphasizes safe, (~~lawful, and~~) ethical, responsible, and lawful hunting practices. (~~Two of the program's~~) Program goals (~~are to improve~~) include improving the public's perception of hunt-

ing and (~~to perpetuate~~) perpetuating the highest hunting standards. A master hunter(~~s actively~~) permit is required to participate in controlled hunts to eliminate problem animals that damage property (~~and~~) or threaten public safety.

(a) The cost of initially applying for (~~the~~) a master hunter (~~program is twenty~~) permit shall be fifty dollars. The (~~department will determine the program's prerequisites and curriculum. The department may establish an advisory group to assist agency staff in developing the prerequisites and curriculum~~) cost of renewing a master hunter permit shall be twenty-five dollars.

(b) (~~Master hunter candidates who successfully complete the master hunter program will receive a certificate, a master hunter patch, and a master hunter identification card. The master hunter identification card is valid for five consecutive years from the date of issuance. The card will be renewed for an additional five years if, during the period of validity, the master hunter completes forty hours of additional master hunter program requirements as determined by the department.~~) The department shall determine the program's requirements and curriculum. The director shall establish an advisory group to assist agency staff in developing and managing the program.

(3) Master hunters are held to the highest ethical standards because these hunters are ambassadors for the department and are role models and mentors for the hunting community and for the public at large. (~~As such, current advanced hunters must apply to be master hunters. Applicants must submit to a criminal background check. Applicants who have prior wildlife or trespassing while hunting convictions within the last ten years, or prior felonies prohibiting the possession of firearms (unless firearm possession is reinstated), or who have a current hunting license suspension in another state, cannot apply for the master hunter program.~~)

(a) ~~Individuals who successfully complete the master hunter program must obey all laws and regulations.~~ Initial master hunter permit applicants must submit to a criminal background check. The department shall deny entry into the master hunter permit program to those applicants who have:

(a) Paid the required fine or been convicted within the last ten years of a chapter 77.15 RCW offense;

(b) Paid the required fine or been convicted within the last ten years of criminal trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement, while hunting, fishing, or engaging in any activity regulated by the department;

(c) Prior felonies prohibiting the possession of firearms, unless firearm possession is reinstated; or

(d) A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in Washington or in another state.

(4) Master hunter(~~s~~) permit applicants will be required to sign and abide by a hunter code of ethics (~~in addition to all department laws and regulations~~).

(b) ~~Persons who successfully pass the master hunter program and maintain the requirements set forth in this section are entitled to participate in special hunts. These hunters must possess a valid master hunter identification card while participating in the hunts. Master hunters who are convicted of wildlife misdemeanors, gross misdemeanors, or felonies;~~

trespassing while hunting; or reckless endangerment involving hunting weapons, will be removed from the master hunter program for life. Master hunters who commit wildlife infractions may be removed from the master hunter program for up to a five-year period.

~~(e) The department's master hunter coordinator will maintain open communications with landowners and the community to investigate complaints about master hunters of the master hunter program. If a master hunter is charged with a wildlife or trespassing violation that does not result in a conviction, or an ethical violation that does not rise to a criminal law or regulation violation, a master hunter peer review committee, selected by the advisory group, will evaluate the behavior to decide whether it was egregious. If the committee deems the behavior egregious, the department may suspend the violator's master hunter privileges for any amount of time, up to and including life.~~

~~(d) Any person who has his or her master hunter privileges suspended under this subsection)) and pass a comprehensive examination based upon study materials provided by the department. An initial master hunter permit applicant found to have submitted fraudulent information to the department or to have cheated on the master hunter examination will be excluded from the master hunter permit program for life.~~

(5) Initial master hunter permit applicants who successfully complete the master hunter permit program will receive a master hunter patch and a master hunter permit. The initial master hunter permit is valid for five consecutive years from the date of issuance. The permit may be renewed for additional five-year increments if, during each five-year period of validity, the master hunter fulfills the renewal requirements established by the department.

(6) Master hunters renewing their permit shall authorize the department to conduct a criminal background check each time they renew. The criminal background check will go back five years from the master hunter's anniversary date or back to the date this rule amendment was adopted, whichever period of time is shorter. The department's approval will be determined by compliance with this section.

(7) Persons who successfully complete the master hunter permit program and maintain the requirements developed by the department may participate in special hunts. These master hunters must possess a valid master hunter permit while participating in the hunts.

(8) The department shall suspend a master hunter's permit for life if the master hunter:

(a) Pays the required fine or is convicted of a chapter 77.15 RCW misdemeanor, gross misdemeanor, or felony;

(b) Pays the required fine or is convicted of criminal trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement, while hunting, fishing, or engaging in any activity regulated by the department;

(c) Pays the required fine or is convicted of a felony prohibiting the possession of firearms, unless firearm possession is reinstated;

(d) Has his or her hunting or fishing license revoked, or hunting or fishing license privileges suspended in Washington or in another state; or

(e) Submitted fraudulent information to the department.

(9) A master hunter who pays the required fine or is found to have committed an infraction under chapter 77.15 RCW or the department's rules shall have his or her master hunter permit suspended for a period of two years.

(10) If a master hunter is cited, or charged by complaint, for a chapter 77.15 RCW offense; or for trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement, while hunting, fishing, or engaging in any activity regulated by the department, the department may immediately suspend the person's master hunter permit until the offense has been adjudicated.

(11) The department's master hunter coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about master hunters and determine whether such complaints have merit and warrant enforcement action.

(12) Except under subsection (10) of this section, if a master hunter has his or her initial or renewal master hunter permit suspended for less than life, and the person wants to become a master hunter again, he or she must repeat the entire master hunter permit application process once the suspension period is over.

(13) Any person who has been denied initial admission into the master hunter permit program, renewal of his or her master hunter permit, or has had his or her master hunter permit suspended, has the right to an administrative hearing to contest the agency action. Such hearing will be held pursuant to chapter 34.05 RCW, the Administrative Procedure Act. Initial master hunter permit applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

~~((e))~~ (14) "Conviction," as used in this section, is defined in RCW 77.15.050.

~~((4))~~ (15) It is unlawful for any person to ((participate)) hunt in a hunt restricted to master hunters if such person has not successfully ((passed)) been admitted into the master hunter ((course)) permit program and maintained the requirements set forth in this section, or if the person's master hunter ((privileges have)) permit has been suspended. Master hunters need a valid master hunter permit and a valid hunting license and tag to hunt in master hunter restricted hunts. "To hunt," as used in this section, is defined as "an effort to kill, injure, capture, or harass a wild animal or wild bird," pursuant to RCW 77.08.010(53). Master hunters who have been issued a disabled hunter permit by the department may only hunt with a designated hunter companion who has been admitted into the master hunter permit program and maintained the requirements under this section. Violations of this subsection shall be enforced under RCW 77.15.400 for wild birds, RCW 77.15.410 for big game, and RCW 77.15.430 for wild animals other than big game.

(16) Only Washington residents, as defined in RCW 77.08.010(39), may apply for an initial master hunter permit.

**WSR 09-19-086**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed September 18, 2009, 8:52 a.m., effective October 19, 2009]

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

Purpose: Amend WAC 308-107-020 to clarify application and eligibility requirements for an ignition interlock driver's license, impose a deadline for meeting requirements after an application has been submitted, and add information on license duration.

Citation of Existing Rules Affected by this Order: Amending WAC 308-107-020.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.385.

Adopted under notice filed as WSR 09-15-195 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 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: September 17, 2009.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

**WAC 308-107-020 Ignition interlock driver's license—Application—License term.** (1) A person applying for an ignition interlock driver's license must meet the requirements of RCW 46.20.380 and 46.20.385, and submit ((a nonrefundable fee as required by RCW 46.20.380, and submit an application on a form provided by the department)) the following:

(a) A nonrefundable application fee of one hundred dollars;

(b) An application on a form provided by the department;

(c) Satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Proof from an installer approved by the department that a functioning ignition interlock device has been installed.

If all the requirements for an ignition interlock driver's license are not met within thirty days after the application has been accepted by the department, the license will be denied.

(2) In the event of an alcohol-related deferred prosecution, the ignition interlock driver's license requirement shall

extend for a two-year term from the date the deferral was granted.

(3) Reapplication for the ignition interlock driver's license may be required whenever a new administrative suspension or revocation is imposed.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 09-19-095**  
**PERMANENT RULES**  
**WASHINGTON STATE LOTTERY**

[Filed September 18, 2009, 3:54 p.m., effective October 19, 2009]

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

Purpose: WAC 315-30-010 Draw games—Authorized—Director's authority, the commission authorizes the director to select and operate draw games approved by the commission. Before the director approves final draw game specifications, the director shall provide the commission a full description of the proposal and obtain approval of the game concept.

Citation of Existing Rules Affected by this Order: Amending WAC 315-30-010.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 09-07-022 on March 6, 2009.

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

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

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

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

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

Date Adopted: April 21, 2009.

Jana Jones  
Director of  
Legal Services

AMENDATORY SECTION (Amending WSR 07-11-037, filed 5/8/07, effective 6/8/07)

**WAC 315-30-010 Draw games—Authorized—Director's authority.** The commission hereby authorizes the director to ~~((select and))~~ operate draw games which meet the criteria set forth in this chapter. New draw games shall not be made available for sale without approval of the commission.

(1) The director may contract for the development and operation of draw games, ~~((as determined necessary by the director))~~ and may operate said games subject to the approval of the commission.

(2) Before approving the final draw game specifications, the director shall provide the commission with a description of the proposal, and obtain approval of the proposed game concept by the commission.

(3) The director shall establish and approve the final draw game specifications, as executed in working papers or software requirement specifications, including the determination of winning tickets, ~~((prior to))~~ after presentation and approval of any new draw game proposal to the commission for a vote of the commission.

~~((3) New draw games shall not be made available for sale without approval of the commission.))~~

(4) All draw game procedures and play criteria shall be made available to the public on the agency internet web site and ~~((on))~~ upon request.

### WSR 09-19-096

#### PERMANENT RULES

#### THE EVERGREEN STATE COLLEGE

[Filed September 18, 2009, 3:39 p.m., effective October 19, 2009]

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

Purpose: This rule permits the college to require a student to withdraw from the college if it is determined that due to a physical illness or a mental, emotional, or psychological condition, the student is unable to continue without significant risk of harm to the student, to others, or disruption of college activities.

Statutory Authority for Adoption: RCW 28B.40.120.

Adopted under notice filed as WSR 09-09-112 on April 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.

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

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

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

Date Adopted: September 14, 2009.

J. P. Carmichael  
Rules Coordinator

### Chapter 174-125 WAC

#### REQUIRED AND EMERGENCY MEDICAL LEAVE OF ABSENCE

#### NEW SECTION

**WAC 174-125-010 Issuing a required medical leave of absence.** (1) The dean of student and academic support services, or the dean's designee, (hereinafter collectively referred to as the "dean") may require a student to take a medical leave of absence if a student has a physical illness or a mental, emotional or psychological condition and as a result of the condition:

(a) Is engaging in, or is threatening to engage in, behavior that poses a significant danger of causing substantial harm to the health, safety or welfare of the student or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student, or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) In determining whether to require a student to take a medical leave of absence, the dean shall consult with the director of health and counseling services, or the director's designee (hereinafter collectively referred to as "director of health and counseling services") and, where possible, other persons who can provide relevant information about a student's condition.

(3) Prior to the dean requiring a student to take a medical leave of absence, the student shall be provided an opportunity to present information about his or her circumstances, where reasonably possible, to the dean. A student waives their opportunity to provide information if he or she is unwilling or unable to meet with the dean in a timely manner.

(4) The dean shall issue the required medical leave of absence in writing to the student. The written notice shall include the effective date of the leave, the reasons for requiring the leave, the conditions for reenrollment, and any restrictions imposed on the student's access to the campus or college-sponsored activities.

(5) The required medical leave of absence shall be effective twenty-one days after it is served on the student, unless the student files a timely written appeal of the dean's decision as set forth in these rules. Service of the dean's decision shall be complete upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.



NEW SECTION

**WAC 174-125-015 Appealing a required medical leave of absence.** A student may appeal the dean's decision imposing a required medical leave of absence to the medical leave of absence review board (review board). The appeal must be submitted in writing to the vice-president for student affairs within twenty days of service of the dean's decision.

NEW SECTION

**WAC 174-125-020 Hearing an appeal of a required medical leave of absence.** (1) Upon receipt of a timely appeal by a student of the dean's decision imposing a required medical leave of absence, the vice-president of student affairs, or the vice-president's designee, (hereinafter collectively referred to as the "vice-president") shall convene the review board to hear the appeal. The review board may:

(a) Affirm the dean's decision;

(b) Affirm the dean's decision but alter the disposition from imposition of a required medical leave of absence to conditional enrollment under specified directives; or

(c) Reverse the dean's decision allowing the student to remain enrolled without restriction.

(2) The review board's decision shall be in writing and served on the student within seven business days of the hearing. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) The review board shall be composed of at least three members drawn from a pool of academic deans and staff members not reporting to the dean who have been identified by the president. The president shall select one of the members to act as the chair at the hearing.

(4) The vice-president shall notify the student in writing of the time, date, and location of the hearing.

(5) The review board shall conduct the hearing according to the Administrative Procedure Act, chapter 34.05 RCW.

(6) The chair of the review board may order the hearing closed to public observation as necessary to protect from disclosure medical or educational records held to be confidential under state or federal law.

NEW SECTION

**WAC 174-125-025 Emergency medical leave of absence.** (1) The dean may immediately require a student to take an emergency medical leave of absence if the student has a medical, or mental, emotional or psychological condition and as a result of the condition:

(a) The student is engaging in, or threatening to engage in, behavior that poses a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student, or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student, or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing imminent

and substantial harm to the health, safety, or welfare of the student, or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior imminently and substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) A decision by the dean requiring a student to take an emergency medical leave of absence shall be in writing and served on the student. The decision shall set forth the reasons for requiring the leave, and as appropriate, any restrictions imposed on the student's access to the campus or college-sponsored activities. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) A student subject to an emergency medical leave of absence shall be provided a hearing before the vice-president to appeal the dean's decision. The hearing shall occur within three business days of the student being served with the dean's decision imposing the emergency medical leave of absence unless a student elects to waive his or her right to a hearing. Except as otherwise provided herein, the process for conducting the hearing before the vice-president shall be as per the Administrative Procedure Act, chapter 34.05 RCW.

(4) An emergency medical leave of absence shall take effect immediately and remain in effect until the review board's decision is issued regarding an appeal of a required medical leave of absence, unless the dean decides that the reasons for the emergency medical leave of absence no longer exist.

NEW SECTION

**WAC 174-125-030 Returning from a required medical leave of absence.** (1) A student wishing to be considered for reenrollment to the college shall submit an application for reenrollment to the dean at least one month prior to the start of the quarter in which the student wishes to reenroll. The student shall provide appropriate documentation with any conditions for reenrollment set forth in the dean's decision. If a student files an appeal of the dean's decision, and the conditions for reenrollment are modified by the review board, the student shall provide evidence that the conditions set forth in the review board's order have been met. A student must also meet all other admission or enrollment requirements of the college for reenrollment.

(2) The dean shall consult with the director of health and counseling prior to determining if the student may reenroll.

(3) The dean shall notify the student in writing of the decision and the conditions associated with the approval or denial for reenrollment.

**WSR 09-19-102****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed September 21, 2009, 11:09 a.m., effective November 4, 2009]

Effective Date of Rule: November 4, 2009.

Purpose: New WAC 390-16-049 is designed to clarify when a political committee that is located out-of-state is required to file as an in-state committee under RCW 42.17.040 through 42.17.090.

Statutory Authority for Adoption: RCW 42.17.370(1).

Adopted under notice filed as WSR 09-14-020 on June 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: August 27, 2009.

Vicki Rippie  
Executive Director

**NEW SECTION**

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

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

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

(b) **Organizational purpose and campaign activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state.

Therefore, to qualify as a current out-of-state committee, the committee must also:

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

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

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

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

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

**WSR 09-19-103****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed September 21, 2009, 11:09 a.m., effective November 4, 2009]

Effective Date of Rule: November 4, 2009.

Purpose: Amend WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees, to incorporate provisions of WAC 390-16-049 in the C-5 form and to make inflationary adjustments in compliance with RCW 42.17.093 (1)(g).

Citation of Existing Rules Affected by this Order: Amending WAC 390-16-050.

Statutory Authority for Adoption: RCW 42.17.370(1) and 42.17.093 (1)(g).

Adopted under notice filed as WSR 09-14-020 on June 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 1, Repealed 0.

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

Date Adopted: August 27, 2009.

Vicki Rippie  
Executive Director

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

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

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Form <b>C5</b> 1/08	This space for office use P M O S T R E C E I V E D
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**OUT OF STATE COMMITTEE CONTRIBUTIONS TO WASHINGTON CANDIDATES OR COMMITTEES**

<b>1. Name and address of committee making the contribution</b> Name Street address City / State / Zip	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
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3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)

<b>4. Officers or responsible leaders of committee:</b>	
Name and address	Title

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

Candidate's name	Office sought	Political Party	Date	Amount given

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

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

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

Recipient's name and address	Purpose	Date	Amount given

Check here  if continued

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

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

Name and address	Date	Amount

Check here  if continued on an attached sheet

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

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

Check here  if continued on an attached sheet

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

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

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

Signature of Committee Official	Name – Typed or Printed
_____	_____
Title	Daytime Telephone No. (    ) _____
_____	E-Mail Address _____

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## **INSTRUCTIONS**

**(Statutory reference: RCW 42.17.093)**

### **WHO MUST REPORT**

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

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

### **WHEN TO REPORT**

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

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

### **SEND REPORT TO**

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

### **Questions?**

**Contract PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111**

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Form <b>C5</b> (11/09)	This space for office use P M O A S R T K  R E C E I V E D
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**Out-of-State Political Committee Campaign Finance Report**

<b>1. Name and full address of committee making the contribution</b> Name Street address City / State / Zip	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
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**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

<b>4. Officers or responsible leaders of committee:</b> Name and full address	Title
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<b>5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:</b> Name of state(s) & administrative agency(s)	Agency(s) website address
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**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate name	Office sought	Political party	Date	Amount

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

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

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

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

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

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

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

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

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

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

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

Check here  if continued on an attached sheet

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

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

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

Signature of Committee Official _____	Name – Typed or Printed _____
Title _____	Daytime Telephone No. (    ) _____
	E-Mail Address _____



**Instructions** – (Statutory reference: RCW 42.17.093)

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

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

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

**Questions?** Contact PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111

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

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

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

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

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

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

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

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

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

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

**WSR 09-19-107**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed September 21, 2009, 2:52 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare. The department has determined that without this rule clients may lose services or benefits. The current emergency rule filed as WSR 09-12-116 expires on October 1, 2009.

Purpose: The department is filing this rule to amend the eligibility dates for converting state only residential allowance to state supplemental payments (SSP) when there is an ongoing need for a residential allowance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-827-0115.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020, 74.04.057.

Other Authority: Title 71A RCW, 20 C.F.R. Part 416.

Adopted under notice filed as WSR 09-12-059 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 0, Repealed 0.

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

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

Date Adopted: September 18, 2009.

Stephanie E. Vaughn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 07-24-030, filed 11/28/07, effective 12/29/07)

**WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?** Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allowance,
- (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2009 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

#### WSR 09-19-112

##### PERMANENT RULES

#### WASHINGTON CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

[Filed September 22, 2009, 10:28 a.m., effective October 23, 2009]

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

Purpose: To correct an error in WAC 183-01-020. The reference to Article 2, section 1 of the state Constitution is incorrect. The section is corrected to read Article 28, section 1 of the state Constitution.

Citation of Existing Rules Affected by this Order: Amending WAC 183-01-020.

Statutory Authority for Adoption: RCW 43.03.300 through 43.03.310.

Adopted under notice filed as WSR 09-15-068 on July 13, 2009.

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

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

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

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

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

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

Date Adopted: September 22, 2009.

Carol Sayer  
Director

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

**WAC 183-01-020 Authority and duties.** The commission's authority and duties are described in Article ((2)) 28, section 1 of the state Constitution and in RCW 43.03.310.

#### WSR 09-19-113

##### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed September 22, 2009, 10:07 a.m., effective October 23, 2009]

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

Purpose: Rule making is required to update the rules to comply with the "market value threshold amount" required in RCW 46.12.005.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-460, 308-56A-500, 308-63-010, and 308-63-090.

Statutory Authority for Adoption: RCW 46.12.005.

Other Authority: RCW 46.01.110.

Adopted under notice filed as WSR 09-15-028 on July 7, 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 0.

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

Date Adopted: September 22, 2009.

Walt Fahrner  
Rules Coordinator

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

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

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.070

by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Odometer disclosure statement, if applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Affixed" means attached.

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

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

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

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

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

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

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

(11) ~~"Declaration of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed, or mutilated. The declaration of loss release of interest form may be used to release interest in the vehicle and transfer gross~~

~~weight license for that vehicle to a new owner. The signature of the owner completing the declaration of loss release of interest must be signed under penalty of perjury, as described in WAC 308-56A-270.~~

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

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

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

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

(16) "Impossible to affix" as used in RCW 46.12.240, means that there is nothing made by the manufacturer for the originally manufactured vehicle which would allow the license plate to be affixed to the vehicle in the manner prescribed in RCW 46.12.240.

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

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

(19) "Legal owner" means the same as described in RCW 46.04.270.

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

(21) "Market value threshold amount" is the amount assigned to vehicles which includes a motor vehicle amount as defined in RCW 46.12.005 is required.

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

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

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

(25) "Person" means the same as described in RCW 46.04.405.

(26) "Personal representative" means:

(a) An individual appointed by the court; or

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

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

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

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

(27) "Security interest holders" means in this instance, the same as "lien holder" as defined in subsection ~~((16))~~ (18) of this section.

(28) "Secured party" means in this instance the same as "lien holder" as defined in subsection ~~((16))~~ (18) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WSR 09-19-118**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed September 22, 2009, 12:10 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: Prevailing wage rates on public work projects are determined and enforced according to the trade or occu-

pation or "classification" of work. These classifications are described in the "scopes of work" rules. The electronic technician regulation is a preexisting scope of work rule. Electronic technicians work with low voltage electrical systems. Under the current rule, electronic technicians may pull low voltage wire through metallic conduit that is no longer than ten feet nor larger than one inch. The purpose of this rule making is to allow electronic technicians to pull low voltage wire through any length or width of conduit, with the exception of wire for fire alarm systems. The proposed rule will clear up ambiguities raised by stakeholders.

Citation of Existing Rules Affected by this Order:  
Amending WAC 296-127-01322.

Statutory Authority for Adoption: Chapter 39.12 RCW and RCW 43.22.270.

Adopted under notice filed as WSR 09-12-098 on June 2, 2009.

A final cost-benefit analysis is available by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-522 [902-5292], e-mail [you235@lni.wa.gov](mailto:you235@lni.wa.gov).

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: September 22, 2009.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 00-15-077, filed 7/19/00, effective 7/19/00)

**WAC 296-127-01322 Electronic technicians.** (1) For the purpose of the Washington state public works law, chapter 39.12 RCW, ~~((the scope of work for))~~ electronic technicians ~~((is as follows:~~

~~(1) The installation, operation, inspection, maintenance,))~~ install, operate, inspect, maintain, repair, and service ~~((of))~~:

(a) Radio, television and recording systems and devices~~(-);~~;

(b) Systems for paging, intercommunication, public address, wired music, clocks, security and surveillance systems and mobile radio systems~~(-);~~ and

(c) Fire alarm and burglar systems.

(2) When installed for the specific purpose of carrying low voltage wiring, the ((installation)) work identified in subsection (1) of this section includes:

(a) Installing unlimited lengths of nonmetallic conduit~~((s and))~~;

(b) Installing incidental ~~((shielded))~~ metallic conduits of no longer than ten feet nor larger than one inch~~((, when installed for the specific purpose of carrying low voltage wiring))~~;

~~((3))~~ (c) Pulling wiring through ~~((the type of))~~ conduit ~~((described under subsection (2) of this section, when the wiring is installed for the specific purpose of carrying low voltage electricity))~~, except as provided in subsection (3) of this section; and

~~((4))~~ (d) All the cleanup required in connection with electronic technician's work.

(3) The work identified in subsection (1) of this section does not include pulling wiring through conduit that exceeds ten feet in length for the purpose of installing fire alarm systems.

### WSR 09-19-119

#### PERMANENT RULES

#### DEPARTMENT OF

#### LABOR AND INDUSTRIES

[Filed September 22, 2009, 12:15 p.m., effective December 1, 2009]

Effective Date of Rule: December 1, 2009.

Purpose: We responded to a Federal Register notice that OSHA updated their respirator requirements for the controlled negative pressure REDON fit testing protocol. We updated our rule to be identical to OSHA's rule.

This rule was also recently reformatted. During that process some helpful information (not including requirements) was inadvertently deleted, so we put it back in. In addition there were some minor housekeeping changes to make this rule consistent with other DOSH rules.

The proposed language in chapter 296-842 WAC will meet L&I's statutory mandate to be as-effective-as the federal equivalent.

Citation of Existing Rules Affected by this Order: Amending WAC 296-842-100 Scope and application, 296-842-10505 Designate a program administrator, 296-842-11005 Make sure voluntary use of respirators is safe, 296-842-12010 Keep respirator program records, 296-842-13005 Select and provide appropriate respirators, 296-842-14005 Provide medical evaluations, 296-842-15005 Conduct fit testing, 296-842-16005 Provide effective training, 296-842-17005 Maintain respirators in a clean and reliable condition, 296-842-18005 Prevent sealing problems with tight-fitting respirators, 296-842-19005 Provide standby assistance in immediately dangerous to life or health (IDLH) conditions, 296-842-22005 Use this medical questionnaire for medical evaluations, 296-842-22010 Follow these fit-testing procedures for tight-fitting respirators and 296-842-22020 Follow procedures established for seal checking respirators; new section WAC 296-842-10200 Definitions; and repealing WAC 296-842-110 Voluntary respirator use requirements and 296-842-300 Definitions.

Statutory Authority for Adoption: RCW 49.17.050.

Other Authority: 29 C.F.R. Subpart Z.

Adopted under notice filed as WSR 09-14-07 [09-14-107] on June 30, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 14, Repealed 2; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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 22, 2009.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-100 Scope and application.** (1) Respirators are required whenever respiratory hazards (including oxygen-deficient conditions) are present. For example, use respirators at any of the following times:

(a) While exposure controls are being evaluated or put in place;

(b) When it is not feasible to use exposure controls to remove or reduce the airborne hazard to below the PEL.

(2) This chapter applies ~~((to all use of))~~ whenever respirators are used at work.

#### **IMPORTANT:**

Before ~~((you decide to use))~~ using respirators, ~~((you))~~ employers are required to evaluate respiratory hazards and implement control methods as outlined in chapter 296-841 WAC, Airborne contaminants.

The term "respiratory hazards" will be used throughout this chapter to refer to oxygen-deficient conditions and harmful airborne hazards.

#### **(Definition:**

Respirators are a type of personal protective equipment designed to protect the wearer from respiratory hazards.)

You ~~((can))~~ may use Table 1 for general guidance on which chapter sections apply ~~((to you))~~.



**Table 1**  
**Chapter sections that apply to your workplace**

If employees...	Then the sections marked with an "X" apply...							
	<del>((105))</del> 10505	<del>((110))</del> 11005	<del>((120))</del> 12005	<del>((130-210))</del> 13005	<del>((220))</del> 14005	<del>((300))</del> 15005 - 21005	22005	22010
Request and are <b>permitted</b> to voluntarily use filtering-facepiece respirators, and are not exposed to a respiratory hazard		X				<del>((X))</del>		
Request and are <b>permitted</b> to voluntarily use respirators that are <b>NOT</b> filtering-facepiece respirators, and are not exposed to a respiratory hazard	X	X			X	<del>((X))</del>	<u>X</u>	
Are <b>required</b> to use any respirator by <del>((WISHA))</del> <u>DOSH</u> or the employer	X		X	X	X	X	<u>X</u>	<u>X</u>
Would use an <b>escape respirator</b> in an emergency	X		X	X	X	X	<u>X</u>	<u>X</u>

**Reference:** See WAC 296-800-160, Personal protective equipment (PPE) to find requirements for other types of PPE such as eye, hand, and head protection.

**NEW SECTION**

**WAC 296-842-10200 Definitions.** (1) **Air-purifying respirator (APR)** means a respirator equipped with an air-purifying element such as a filter, cartridge, or canister, OR having a filtering facepiece, for example, a dust mask. The element or filtering facepiece is designed to remove specific contaminants, such as particles, vapors, or gases, from air that passes through it.

(2) **Air-line respirator** means an atmosphere-supplying respirator for which breathing air is drawn from a source separate from and not worn by the user, such as:

- A cylinder or a tank;
- A compressor;
- An uncontaminated environment.

(3) **Air supplied respirator (see air-line respirator).**

(4) **Assigned protection factor (APF)** indicates the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when you implement a continuing, effective respiratory protection program as specified by this chapter. For example, an effective program makes sure the respirator is:

- Functioning properly;
- Fitted to the user;
- Worn by trained individuals; and
- Used with the limitations specified on the NIOSH-approval label.

(5) **Atmosphere-supplying respirator** means a respirator that supplies the user with breathing air from sources, such as:

- A cylinder or a tank;
- A compressor;
- An uncontaminated environment.

(6) **Breathing air** means air supplied to an atmosphere-supplying respirator. This air meets the specifications found in WAC 296-842-20005.

(7) **Canister or cartridge (air-purifying)** is part of an air-purifying respirator that consists of a container holding materials such as fiber, treated charcoal, or a combination of the two, that removes contaminants from the air passing through the cartridge or canister.

(8) **Cartridge respirator (see also air-purifying respirator)** means an air-purifying respirator equipped with one or more cartridges. These respirators have a facepiece made from silicone, rubber OR other plastic-like materials.

(9) **Demand respirator** means an atmosphere-supplying respirator that sends breathing air to the facepiece only when suction (negative pressure) is created inside the facepiece by inhalation. Demand respirators are "**negative pressure**" respirators.

(10) **DOSH** means the division of occupational safety and health, located in the department of labor and industries.

(11) **Dust mask** is a name used to refer to filtering-facepiece respirators. Dust masks may or may not be NIOSH certified. See filtering facepiece.

(12) **Emergency respirator** means a respirator suitable for rescue, escape, or other activities during emergency situations.

(13) **Emergency situation** means any occurrence that could or does result in a significant uncontrolled release of an airborne contaminant. Causes of emergency situations include, but are not limited to, equipment failure, rupture of containers, or failure of control equipment.

(14) **End-of-service-life indicator (ESLI)** is a system that warns the air-purifying respirator user that cartridges or canisters must be changed. An example of an ESLI is a dot on the respirator cartridge that changes color.

(15) **Escape-only respirator** is a respirator that can only be used to exit during emergencies. Look for this use limitation on the respirator's NIOSH approval label.

(16) **Exposed, or exposure** means the contact an employee has with a toxic substance, harmful physical agent, or oxygen deficient condition. Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

(17) **Filter** means fibrous material that removes dust, spray, mist, fume, fog, smoke particles, OR other aerosols from the air.

(18) **Filtering-facepiece respirator** means a tight-fitting, half-facepiece, negative-pressure, particulate air-purifying respirator with the facepiece mainly composed of filter material. These respirators do not use cartridges or canisters and may have sealing surfaces composed of rubber, silicone or other plastic-like materials. They are sometimes referred to as "dust masks."

(19) **Fit factor** is a number providing an estimate of fit for a particular respiratory inlet covering to a specific individual during quantitative fit testing.

(20) **Fit test** (see also qualitative fit test and quantitative fit test) is an activity where the facepiece seal of a respirator is challenged, using a DOSH accepted procedure, to determine if the respirator provides an adequate seal.

(21) **Full-facepiece respirator** means a tight-fitting respirator that covers the wearer's nose, mouth, and eyes.

(22) **Gas mask** means an air-purifying respirator equipped with one or more canisters. These respirators have a facepiece made from silicone, rubber OR other plastic-like materials.

(23) **Half-facepiece respirator** is a tight-fitting respirator that only covers the wearer's nose and mouth.

(24) **Helmet** means the rigid part of a respirator that covers the wearer's head AND also provides head protection against impact or penetration.

(25) **High-efficiency particulate air filter (HEPA)** is a powered air-purifying respirator (PAPR) filter that removes at least 99.97% of monodisperse dioctyl phthalate (DOP) particles with a mean particle diameter of 0.3 micrometer from contaminated air.

**Note:** Filters designated, under 42 CFR Part 84, as an "N100," "R100," or "P100" provide the same filter efficiency (99.97%) as HEPA filters.

(26) **Hood** is the part of a respirator that completely covers the wearer's head and neck AND may also cover some or all of the shoulders and torso.

(27) **Immediately dangerous to life or health (IDLH)** means an atmospheric condition that would:

- Cause an immediate threat to life; or
- Cause permanent or delayed adverse health effects; or
- Interfere with an employee's ability to escape.

(28) **Licensed health care professional (LHCP)** means an individual whose legally permitted scope of medical practice allows him or her to provide some or all of the health care services required for respirator users' medical evaluations.

(29) **Loose-fitting facepiece** is a respiratory inlet covering that is designed to form a partial seal with the face.

(30) **Negative-pressure respirator** means any tight-fitting respirator in which the air pressure inside the facepiece is less than the air pressure outside the respirator during inhalation.

(31) **NIOSH** is the National Institute for Occupational Safety and Health. NIOSH is the federal agency that certifies respirators for occupational use.

(32) **Oxygen deficient** is an atmosphere with an oxygen content below 19.5% by volume.

(33) **Permissible exposure limits (PELs)** are employee exposures to toxic substances or harmful agents that must not be exceeded. PELs are specified in applicable DOSH chapters.

(34) **Positive-pressure respirator** means a respirator in which the air pressure inside the respiratory inlet covering is greater than the air pressure outside the respirator.

(35) **Powered air-purifying respirator (PAPR)** means an air-purifying respirator equipped with a blower that draws ambient air through cartridges or canisters. These respirators, as a group, are not classified as positive pressure respirators and must not be used as such.

(36) **Pressure-demand respirator** means a positive-pressure atmosphere-supplying respirator that sends breathing air to the respiratory inlet covering when the positive pressure is reduced inside the facepiece by inhalation or leakage.

(37) **Qualitative fit test (QLFT)** is a test that determines the adequacy of respirator fit for an individual. The test relies on the employee's ability to detect a test substance. Test results are either "pass" or "fail."

(38) **Quantitative fit test (QNFT)** is a test that determines the adequacy of respirator fit for an individual. The test relies on specialized equipment that performs numeric measurements of leakage into the respiratory inlet covering. Test results are used to calculate a "fit factor."

(39) **Required use** is respirator use that:

- Is necessary to protect employees from respiratory hazards; or
- The employer decides to require for his or her own reasons. For example, the employer decides to follow more rigorous exposure limits.

(40) **Respirator** is a type of personal protective equipment designed to protect the wearer from airborne contaminants, oxygen deficiency, or both.

(41) **Respiratory hazard** means airborne hazards and oxygen deficiency that are addressed in chapter 296-841 WAC, Airborne contaminants.

(42) **Respiratory inlet covering** is the part of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source or both. The respiratory inlet covering may be a facepiece, helmet, hood, suit, or mouthpiece respirator with nose clamp.

(43) **Seal check** means actions conducted by the respirator user each time the respirator is put on, to determine if the respirator is properly seated on the face.

(44) **Self-contained breathing apparatus (SCBA)** is an atmosphere-supplying respirator designed for the breathing air source, to be carried by the user.

(45) **Service-life** means the period of time that a respirator, filter or sorbent, or other respiratory equipment provides adequate protection to the wearer. For example, the period of time that sorbent cartridge is effective for removing a harmful substance from the air.

(46) **Sorbent** means rigid, porous material, such as charcoal, used to remove vapor or gas from the air.

(47) **Supplied-air respirator (see air-line respirator).**

(48) **Tight-fitting facepiece** is a respiratory inlet covering forming a complete seal with the face OR neck. Mouthpiece respirators are not tight-fitting facepieces.

(49) **Voluntary use** means respirator use that is requested by the employee and permitted by the employer when no respiratory hazard exists.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-10505 Designate a program administrator.**

**Exemption:** You do not need to designate a program administrator if employees use only filtering-facepiece respirators and do so only as voluntary use.

~~((Definition:~~

~~Voluntary use is respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.))~~

Designate a program administrator who has overall responsibility for your program and has sufficient training or experience to oversee program development, coordinate implementation, and conduct required evaluations of program effectiveness outlined in WAC 296-842-12005.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-11005 Make sure voluntary use of respirators is safe.**

~~((Definition:~~

~~Voluntary use is respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.))~~

**IMPORTANT:**

~~((If you))~~ • Respirator use is not voluntary, and the required use sections of this chapter apply, if:

~~– An employer chooses to require respirator use (use is NOT voluntary and the required use sections of this chapter apply)).~~

~~– A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present. To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, Airborne contaminants.~~

~~– Some requirements in this section do not apply if only filtering-facepiece respirators are used voluntarily.~~

~~– Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.~~

(1) Make sure voluntary respirator use does NOT:

- (a) Interfere with an employee's ability to work safely, such as restricting necessary vision or radio communication;
- OR**
- (b) Create health hazards.

**Note:**

Examples of health hazards include:

- Skin irritation, dermatitis, or other health effects caused by using a dirty respirator.
- Illness created by sharing contaminated respirators.
- Health effects caused by use of an unsafe air supply, such as carbon monoxide poisoning.

(2) Provide all voluntary respirator users with the advisory information in Table 2 at no cost to them.

~~((Note:~~

~~If you have provided employees with the advisory information required in the previous rule, WAC 296-62-07117, you do not need to provide the additional information in Table 2 to those employees.))~~

(3) Develop and maintain a written program that includes the following:

~~((Exemption:~~

~~If employees use only filtering-facepiece respirators and do so only voluntarily, you do not need to develop and maintain a written program.))~~

(a) Medical evaluation provisions as specified in WAC ((296-842-140)) 296-842-14005.

(b) Procedures to properly clean and disinfect respirators, according to WAC 296-842-22015, if they are reused.

(c) How to properly store respirators, according to WAC 296-842-17010, so that using them does not create hazards.

(d) Procedures to make sure there is a safe air supply, according to WAC ((296-842-200)) 296-842-20010, when using air-line respirators and SCBAs.

(e) Effective training to ensure respirator use does NOT create a hazard.

~~((Note:~~

~~• Pay for medical evaluations, training, travel related costs, and wages. You do NOT need to pay for respirators employees use only voluntarily.~~  
~~• If you have both voluntary and required respirator users, you may choose to treat voluntary users as required users. Doing this exceeds the requirements in this section.))~~

**Exemption:**

If employees use only filtering-facepiece respirators and do so only voluntarily, you do not need to develop and maintain a written program.

(4) Use Table 2 to provide information to employees who voluntarily use any type of respirator.

Table 2

<b>Advisory Information for Employees Who Voluntarily Use Respirators</b>
<ul style="list-style-type: none"> <li>• Respirators protect against airborne hazards when properly selected and used. Respirator usage that is required by ((WISHA)) <u>DOSH</u> or your employer is not voluntary use. With required use, your employer will need to provide further training and meet additional requirements in this chapter. ((WISHA)) <u>DOSH</u> recommends voluntary use of respirators when exposure to substances is below ((WISHA)) <u>DOSH</u> permissible exposure limits (PELs) because respirators can provide you an additional level of comfort and protection.</li> <li>• If you choose to voluntarily use a respirator (whether it is provided by you or your employer) be aware that <b>respirators can create hazards for you</b>, the user. You can avoid these hazards if you know how to use your respirator properly AND how to keep it clean. Take these steps:             <ul style="list-style-type: none"> <li>– Read and follow all instructions provided by the manufacturer about use, maintenance (cleaning and care), and warnings regarding the respirator's limitations.</li> <li>– Choose respirators that have been certified for use to protect against the substance of concern. The National Institute for Occupational Safety and Health (NIOSH) certifies respirators. If a respirator is not certified by NIOSH, you have no guarantee that it meets minimum design and performance standards for workplace use.                 <ul style="list-style-type: none"> <li>■ A NIOSH approval label will appear on or in the respirator packaging. It will tell you what protection the respirator provides.</li> </ul> </li> <li>– Keep track of your respirator so you do not mistakenly use someone else's.</li> <li>– <b>DO NOT</b> wear your respirator into:                 <ul style="list-style-type: none"> <li>■ Required use situations when you are only allowed voluntary use.</li> <li>■ Atmospheres containing hazards that your respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect you against solvent vapor, smoke or oxygen deficiency.</li> </ul> </li> </ul> </li> </ul>

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-12010 Keep respirator program records.** (1) ~~((Keep records of your))~~ A written copy of the current respirator program must be kept by the employer.

(2) Keep each employee's current fit test record, if fit testing is conducted, until the next fit test is administered. Fit test records must include:

- (a) Employee name;
- (b) Test date;
- (c) Type of fit-test performed;
- (d) Description (type, manufacturer, model, style, and size) of the respirator tested;
- (e) Results of fit tests, for example, for quantitative fit tests include the overall fit factor AND a print out, or other recording of the test.

(3) Keep training records that include ~~((employee's))~~ employees' names and the dates trained.

(4) Keep written recommendations from the LHCP.

**Reference:** See chapter 296-802 WAC, Employee medical and exposure records, for additional requirements that apply to medical records.

(5) Employers must allow affected employees and their representatives to examine and copy records required by this section ~~((to be examined and copied by affected employees and their representatives))~~.

~~((Reference: See chapter 296-802 WAC, Employee medical and exposure records, for additional requirements that apply to medical records.))~~

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-13005 Select and provide appropriate respirators.**

**Exemption:** This section does NOT apply to respirator use that is voluntary. See WAC 296-842-11005 for voluntary use program requirements.

**IMPORTANT:**

See chapter 296-841 WAC, Airborne contaminants, for:

- Hazard evaluation requirements. Evaluation results are necessary for respirator selection.

- References to substance-specific rules that may also apply to you and have additional respirator selection requirements. These references are found in the permissible exposure limit (PEL) table.

A respirator shall be provided to each employee when such equipment is necessary to protect the health of the employee. Select and provide, at no cost to employees, appropriate respirators for routine use, infrequent use, and reasonably foreseeable emergencies (such as escape, emergency, and spill response situations) by completing the following process:

**Respirator Selection Process**

**Step 1:** If your only respirator use is for escape, skip to **Step 8** to select appropriate respirators.

**Step 2:** If the respiratory hazard is a biological aerosol, such as TB (tuberculosis), anthrax, psittacosis (parrot fever), or hanta virus, select a respirator appropriate for **nonemer-**

gency activities recognized to present a health risk to workers AND skip to **Step 8**.

- If respirator use will occur during **emergencies**, skip to **Step 8** and document the analysis used to select the appropriate respirator.

- Use Centers for Disease Control (CDC) selection guidance for exposures to specific biological agents when this guidance exists. Visit <http://www.cdc.gov>.

**Step 3:** If the respiratory hazard is a pesticide, follow the respirator specification on the pesticide label AND skip to **Step 9**.

**Step 4:** Determine the expected exposure concentration for each respiratory hazard of concern. Use the results from the evaluation required by chapter 296-841 WAC, Airborne contaminants.

**Step 5:** Determine if the respiratory hazard is classified as IDLH; if it is NOT IDLH skip to **Step 7**.

- The respiratory hazard **IS** classified as IDLH if:
  - The atmosphere is oxygen deficient or oxygen enriched;

**OR**

- You CANNOT measure or estimate your expected exposure concentration;

**OR**

- Your measured or estimated expected exposure concentration is greater or equal to the IDLH value in the NIOSH *Pocket Guide to Chemical Hazards*;

**Note:** ((~~WISHA~~)) ~~DOSH~~ uses the IDLH values in the 1990 edition of the NIOSH *Pocket Guide to Hazardous Chemicals* to determine the existence of IDLH conditions. You may use more recent editions of this guide. Visit [www.cdc.gov/niosh](http://www.cdc.gov/niosh) for more information. ((~~If your measured or estimated expected exposure concentration is below NIOSH's IDLH values, proceed to Step 7.~~))

**Step 6:** Select an appropriate respirator from one of the following respirators for IDLH conditions and skip to **Step 8**:

- Full-facepiece, pressure demand, self-contained breathing apparatus (SCBA) certified by NIOSH for a minimum service life of thirty minutes;

**OR**

- Full-facepiece, pressure demand air-line respirator equipped with an auxiliary self-contained air supply;

**Exception:** If the respiratory hazard is oxygen deficiency AND you can show oxygen concentrations can be controlled within the ranges listed in Table 4 under ALL foreseeable conditions, you are allowed to select ANY type of SCBA or air-line respirator:

**Table 4**  
**Concentration Ranges for Oxygen Deficiency**

Altitude (as ft. above sea level)	Oxygen Concentration Range (as percent oxygen)
Below 3,001	16.0 - 19.5
3,001 - 4,000	16.4 - 19.5
4,001 - 5,000	17.1 - 19.5
5,001 - 6,000	17.8 - 19.5
6,001 - 7,000	18.5 - 19.5

Altitude (as ft. above sea level)	Oxygen Concentration Range (as percent oxygen)
7,001 - 8,000	19.3 - 19.5
Above 8,000 feet the exception does not apply. Oxygen-enriched breathing air must be supplied above 14,000 feet.	

**Step 7:** Select respirator types with assigned protection factors (APFs) from Table 5 that are appropriate to protect employees from the expected exposure concentration.

**Note:** ((~~The helpful tool~~)) ~~Appendix B~~, using assigned protection factors (APFs) for respirator selection, found in ((~~the resource section of~~)) this chapter, ((~~utilizes~~)) ~~uses~~ the hazard-ratio approach established by ANSI Z88.2-1992 to determine which respirator types can provide a sufficient level of protection.

- If no permissible exposure limit (PEL) is established for an airborne contaminant, use relevant available information and informed professional judgment to determine an acceptable exposure limit value to use for calculating hazard ratios. For example, you may use exposure limit values established by the American Conference of Governmental Industrial Hygienists ((~~ACGIH~~)) (~~ACGIH~~)) (ACGIH).

**Step 8:** Consider hazards that could require selection of specific respirator types. For example, select full-facepiece respirators to prevent eye irritation or abrasive blasting helmets to provide particle rebound protection.

**Note:** Rules for specific substances have additional selection specifications that apply to escape and other types of respirators. Make sure you follow those additional requirements before finalizing your selection.

**Step 9:** Evaluate user and workplace factors that might compromise respirator performance, reliability or safety.

Examples:

- High humidity or temperature extremes in the workplace.
- Necessary voice communication.
- High traffic areas and moving machinery.
- If respirator use is for escape only, follow this step and then skip to **Step 11**.
- If the respiratory hazard is a pesticide, follow the requirements on the pesticide label and skip to **Step 11**.

- Time or distance for escape.

**Step 10:** Follow Table 6 requirements to select an air-purifying respirator.

- If Table 6 requirements cannot be met, you must select an appropriate air-line respirator or an SCBA.

**Step 11:** Make sure respirators you select are certified by the National Institute for Occupational Safety and Health (NIOSH).

- Respirators provided exclusively for escape from IDLH atmospheres must be NIOSH-certified for escape from the atmosphere in which they will be used.

- To maintain certification, make sure the respirator is used according to cautions and limitations specified on the NIOSH approval label. This includes manufacturer restrictions on cartridges and canisters.

**Note:** While selecting respirators, you will need to select a sufficient number of types, models or sizes to provide for fit testing. You can also consider other respirator

use issues, such as accommodating facial hair with a loose fitting respirator.

Use Table 5 to identify the assigned protection factor for different types of respirators.

- These assigned protection factors are only effective when the employer implements a continuing, effective respirator program as required by this chapter, including training, fit testing, maintenance, and use requirements.
- You may select respirators assigned for use in higher workplace concentrations of a hazardous substance for use at lower concentrations of that substance, or when required use is independent of concentration.

**Table 5**  
**Assigned Protection Factors (APF) for Respirator Types**

If the respirator is a(n) . . .	Then the APF is . . .
Air-purifying respirator with a:	
• Quarter-mask . . . . .	5
• Half-facepiece. This category includes filtering facepiece and elastomeric facepiece models . . . . .	10
• Full-facepiece . . . . .	50
Powered air-purifying respirator (PAPR) with a:	
• Loose-fitting facepiece . . . .	25
• Half-facepiece . . . . .	50
• Full-facepiece . . . . .	1000
• Hood or helmet . . . . .	25/1000 (see note)
<b>Note:</b> PAPRs with helmets/hoods may receive an APF of 1000 only when you have evidence that testing of these respirators demonstrates performance at a level of protection of 1,000 or greater. Such evidence must be provided by the respirator manufacturer. This level of performance can best be demonstrated by performing a workplace protection factor (WPF) or simulated workplace protection factor (SWPF) study or equivalent testing.	
Air-line respirator with a:	
• Half-facepiece and designed to operate in demand mode . . . . .	10
• Loose-fitting facepiece and designed to operate in continuous flow mode . . . . .	25
• Half-facepiece and designed to operate in continuous-flow mode . . . . .	50
• Half-facepiece and designed to operate in pressure-demand or other positive-pressure mode . . . . .	50

If the respirator is a(n) . . .	Then the APF is . . .
• Full-facepiece and designed to operate in demand mode . . . .	50
• Full-facepiece and designed to operate in continuous-flow mode	1000
• Full-facepiece and designed to operate in pressure-demand or other positive-pressure mode . . . . .	1000
• Helmet or hood and designed to operate in continuous-flow mode	25/1000 (see note)
<b>Note:</b> Air-line respirators with helmets/hoods designed to operate in continuous-flow mode may receive an APF of 1000 when you have evidence that testing of these respirators demonstrates performance at a level of protection of 1,000 or greater. Such evidence must be provided by the respirator manufacturer. This level of performance can best be demonstrated by performing a workplace protection factor (WPF) or simulated workplace protection factor (SWPF) study or equivalent testing.	
Self-contained breathing apparatus (SCBA) with a tight fitting:	
• Half-facepiece and designed to operate in demand mode . . . . .	10
• Full-facepiece and designed to operate in demand mode . . . .	50
• Full-facepiece and designed to operate in pressure-demand or other positive pressure mode (e.g., open/closed circuit) . . . . .	10,000
• Helmet or hood and designed to operate in demand mode . . . .	50
• Helmet or hood and designed to operate in pressure-demand or other positive-pressure mode (e.g., open/closed circuit) . . . .	10,000
Combination respirators:	
• When using a combination respirator, such as an air-line respirator with an air-purifying filter, you must make sure the APF is appropriate to the mode of operation in which the respirator is used . .	
Escape respirators:	
• APFs in this table do not apply to respirators used solely for escape. To select escape respirators, go to Step 8 of this section . . . . .	

Use Table 6 to select air-purifying respirators for particle, vapor, or gas contaminants.

**Table 6**

**Requirements for Selecting Any Air-purifying Respirator**

If the contaminant is a . . .	Then . . .
<ul style="list-style-type: none"> <li>Gas OR vapor</li> </ul>	<ul style="list-style-type: none"> <li>Provide a respirator with canisters or cartridges equipped with a NIOSH-certified, end-of-service-life indicator (ESLI)</li> <li>OR</li> <li>If a canister or cartridge with an ESLI is NOT available, develop a cartridge change schedule to make sure the canisters or cartridges are replaced before they are no longer effective</li> <li>OR</li> <li>Select an atmosphere-supplying respirator</li> </ul>
<ul style="list-style-type: none"> <li>Particle, such as a dust, spray, mist, fog, fume, or aerosol</li> </ul>	<ul style="list-style-type: none"> <li>Select respirators with filters certified to be at least 95% efficient by NIOSH                             <ul style="list-style-type: none"> <li>For example, N95s, R99s, P100s, or High Efficiency Particulate Air (HEPA) filters</li> </ul> </li> <li><del>(OR</del></li> <li><del>You may select respirators NIOSH certified as "dust and mist," "dust, fume, or mist," OR "pesticides." You can only use these respirators if particles primarily have a mass median aerodynamic diameter of at least two micrometers.</del></li> <li><del>Note: These respirators are no longer sold for occupational use.)</del></li> </ul>

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-14005 Provide medical evaluations.**

**Exemption:** This section does **not** apply to employees who **only** use:

- Filtering-facepiece respirators voluntarily. See WAC 296-842-11005 for voluntary use requirements;
- or
- Escape-only respirators that are mouthpiece, loose-fitting, or hooded respirators.

**IMPORTANT:**

If ((you have provided)) an employee **has been provided** with a medical evaluation addressing respirator use, as

required by another chapter, that evaluation will meet the requirements of this section.

Using a respirator can create physical risks for an employee each time it is worn. The extent of these risks depends on these factors:

- Type of respirator;
- Environmental conditions at the worksite;
- Physical demands of the work;
- Use of the protective clothing;
- Employee's health status.

Follow the medical evaluation process, Steps 1 through 7 in this section, to provide medical evaluations for employees at no cost to them.

**Medical Evaluation Process**

**Step 1:** Identify employees who need medical evaluations AND determine the frequency of evaluations from Table 7. Include employees who:

- Are required to use respirators;
- OR
- Voluntarily use respirators that are **not** filtering-facepiece respirators.

**Note:** You may use a previous employer's medical evaluation for an employee if you can:

- Show the employee's previous work and use conditions were substantially similar to yours;

**AND**

- Obtain a copy of the licensed health care professional's (LHCP's) written recommendation approving the employee's use of the respirator chosen by you.

**Step 2:** Identify a licensed health care professional (LHCP) to perform your medical evaluations.

**Note:** If you select a different LHCP, you do not need to have new medical evaluations done.

**Step 3:** Make sure your LHCP has the following information **before** the evaluation is completed:

- Information describing the respirators employees may use, including the weight and type.
- How the respirators will be used, including:
  - How often the respirator will be used, for example, daily, or once a month;
  - The duration of respirator use, for example, a minimum of one hour, or up to twelve hours;
  - The employee's expected physical work effort;
  - Additional personal protective clothing and equipment to be worn;
  - Temperature and humidity extremes expected during use;
- A copy of your written respiratory protection program and this chapter.

**Note:**

- You may choose to send the questionnaire to the LHCP ahead of time, giving time to review it and add any necessary questions,
- The LHCP determines what questions to add to the questionnaire, if any; however, questions in Parts 1-3 may not be deleted or substantially altered.

**Step 4:** Administer the medical questionnaire in WAC 296-842-22005 to employees, OR provide them a medical exam that obtains the same information.

**Note:** You may use on-line questionnaires if the questions are the same and requirements of this section are met.

- Administer the examination or questionnaire at no cost to employees:
  - During the employee's normal working hours;
- OR**
- At a time and place convenient to the employee;
- Maintain employee confidentiality during examination or questionnaire administration:
  - Do **not** view employee's answers on the questionnaire;
  - Do **not** act in a manner that may be considered a breach of confidentiality;

**Note:** Providing confidentiality is important for securing successful medical evaluations. It helps make sure the LHCP gets complete and dependable answers on the questionnaire.

- Make sure employees understand the content of the questionnaire.
- Provide the employee with an opportunity to discuss the questionnaire or exam results with the LHCP.

**Step 5:** Provide follow-up evaluation for employees when:

- The LHCP needs more information to make a final recommendation;

**OR**

- An employee gives any positive response to questions 1-8 in Part 2 OR to questions 1-6 in Part 3 of the ((~~WISHA~~)) DOSH medical evaluation questionnaire in WAC 296-842-22005.

**Note:** Follow-up may include:

- Employee consultation with the LHCP such as a telephone conversation to evaluate positive questionnaire responses;
- Medical exams;
- Medical tests or other diagnostic procedures.

**Step 6:** Obtain a written recommendation from the LHCP that contains only the following medical information:

- Whether or not the employee is medically able to use the respirator;
- Any limitations of respirator use for the employee;
- What future medical evaluations, if any, are needed;
- A statement that the employee has been provided a copy of the written recommendation.

**Step 7:** Provide a powered, air-purifying respirator (PAPR) when the LHCP determines the employee should not wear a negative-pressure air-purifying respirator **AND** is able to wear a PAPR.

**Reference:** See WAC ((296-842-130)) 296-842-13005 for requirements regarding selection of air-purifying respirators.

**Note:** You may discontinue medical evaluations for an employee when the employee no longer uses a respirator.

- If you have staff conducting your medical evaluations, they may keep completed questionnaires and findings as confidential medical records, if they are maintained separately from other records.

Use Table 7 to determine medical evaluation frequency.

**Table 7  
Evaluation Frequency**

<b>Type of Evaluation:</b>	<b>When required:</b>
Initial medical evaluations	<ul style="list-style-type: none"> <li>• Before respirators are fit-tested or used in the workplace.</li> </ul>
Subsequent medical evaluations	<ul style="list-style-type: none"> <li>• If any of these occur:                             <ul style="list-style-type: none"> <li>– Your licensed health care professional (LHCP) recommends them; for example, periodic evaluations at specified intervals.</li> <li>– A respirator program administrator or supervisor informs you that an employee needs reevaluation.</li> <li>– Medical signs or symptoms (such as breathing difficulties) are:                                     <ul style="list-style-type: none"> <li>• Observed during fit testing or program evaluation</li> </ul> </li> </ul> </li> <li><b>OR</b></li> <li>• Reported by the employee</li> <li>– Changes in worksite conditions such as physical work effort, personal protective clothing, or temperature that could substantially increase the employee's physiological stress.</li> </ul>

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-15005 Conduct fit testing.**

**Exemption:** This section does **not** apply to any respirators that are:
 

- Voluntarily used. See WAC 296-842-11005 for voluntary use requirements.
- Mouthpiece respirators and other escape-only respirators.
- Loose-fitting respirators.

**IMPORTANT:**

• Fit testing is an activity where the seal of a respirator is tested to determine if it's adequate.

• This section covers general requirements for fit testing. Specific fit testing procedures are covered in WAC 296-842-22010.

(1) Provide, at no cost to the employee, fit tests for ALL tight fitting respirators on the following schedule:



(a) Before employees are assigned duties that may require the use of respirators;

(b) At least every twelve months after initial testing;

(c) Whenever any of the following occurs:

- A different respirator facepiece is chosen such as a different type, model, style, or size;

- You become aware of a physical change in an employee that could affect respirator fit. For example, you may observe, or be told about, facial scarring, dental changes, cosmetic surgery, or obvious weight changes;

- An employee notifies you, or your LHCP, that the respirator fit is unacceptable. During the retest, you must give an employee reasonable opportunity to select a different respirator facepiece (size, model, etc.).

**Note:** You may accept a fit test completed by a previous employer **IF:**

- You obtain written documentation of the fit test;

**AND**

- The results of the fit test are not more than twelve months old;

**AND**

- The employee will use the same respirator (the same type, model, style, and size);

**AND**

- The fit test was conducted in a way that meets the requirements of WAC ((296-842-150)) 296-842-15005 and 296-842-22010.

(2) Select and use an appropriate fit-testing procedure from WAC 296-842-22010 of this chapter.

(3) Use quantitative fit-test methods when a negative pressure respirator will be used in concentrations requiring a protection factor greater than 10. This includes:

- Full facepiece air-purifying respirators;
- SCBAs operated in demand (negative pressure) mode;
- Air-line respirators operated in demand mode.

(4) Make sure tight-fitting PAPRs, SCBAs, or air-line respirators are fit tested in negative-pressure mode. This must be done by either:

(a) Temporarily converting the respirator user's actual facepiece into a negative pressure respirator using the appropriate filters;

**OR**

(b) Using an identical negative pressure air-purifying respirator facepiece as a surrogate for the SCBA, air-line or PAPR. The surrogate facepiece must have the same sealing surfaces as the SCBA, air-line, or PAPR.

Remove any modifications made to the respirator facepiece for fit testing and return the facepiece to the NIOSH approved configuration before the facepiece is used in the workplace.

(5) Make sure the person conducting fit testing is able to do ALL of the following:

- (a) Prepare test solutions if required;
- (b) Make sure equipment works properly;
- (c) Perform tests properly;
- (d) Recognize invalid tests;
- (e) Calculate fit factors properly if required.

**Note:** • No specific training program or certification is required for those who conduct fit tests.

- You should consider evaluating these individuals to determine their proficiency in the fit-testing method to be used.

- You can use an evaluation form such as the form included in the American National Standard for Respirator Fit Testing Methods, ANSI/AIHA Z88.10-2001 to determine if the individual meets these requirements. Visit [www.ansi.org](http://www.ansi.org) or [www.aiha.org](http://www.aiha.org).

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-16005 Provide effective training.**

**Exemption:** This section does not apply to respirators that are voluntarily used. See WAC 296-842-11005 for voluntary use requirements.

(1) Train employees, based on their duties, if they do any of the following:

- (a) Use respirators
- (b) Supervise respirator users
- (c) Issue, repair, or adjust respirators

(2) Present effective training in a way that employees understand.

**Note:**

- Training may be provided using audiovisuals, slide presentations, formal classroom instruction, informal discussions during safety meetings, training programs conducted by outside sources, or a combination of these methods.

- You may want to have instructors available when using video or automated training methods to:

- Encourage and provide responses to questions for the benefit of employees
- Evaluate employees' understanding of the material
- Provide other instructional interaction to employees.

(3) Make sure a qualified instructor provides training

(4) Provide training, at no cost to the employee, at these times:

- (a) Initially, before worksite respirator use begins
- (b) Periodically, within twelve months of the previous training
- (c) Additionally, when the following occur:

- The employee has not retained knowledge or skills

**OR**

- Changes in the worksite, or type of respirator make previous training incomplete or obsolete.

**Note:**

- You may accept an employee's previous training, such as training provided by another employer, to satisfy the initial training requirement if:

- You can demonstrate the employee received training within the past twelve months

**AND**

- The employee can demonstrate the knowledge and skills to use required respirators effectively.

- If you accept an employee's previous training to satisfy the initial training requirement, you are still responsible for providing periodic, and additional training when needed. Periodic training would need to be provided within twelve months of the employee's previous training.

(5) Make sure employees can demonstrate the following knowledge and skills as required by their duties:

(a) Why the respirator is necessary. Include, for example, information identifying respiratory hazards such as hazardous chemicals, the extent of the employee's exposure, and potential health effects and symptoms

(b) The respirator's capabilities and limitations. Include, for example, how the respirator provides protection and why air-purifying respirators cannot be used in oxygen-deficient conditions

(c) How improper fit, use, or maintenance can compromise the respirator's effectiveness and reliability

(d) How to properly inspect, put on, seal check, use, and remove the respirator

(e) How to clean, disinfect, repair, and store the respirator, or how to get this done by someone else

(f) How to use the respirator effectively in emergency situations; including what to do when a respirator fails and where emergency respirators are stored

(g) Medical signs and symptoms that may limit or prevent the effective use of respirators such as shortness of breath or dizziness

(h) The employer's general obligations under this chapter. For example, developing a written program, selecting appropriate respirators, and providing medical evaluations.

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-17005 Maintain respirators in a clean and reliable condition.**

**IMPORTANT:**

• This section applies to employees who voluntarily use respirators only when maintenance is necessary to prevent the respirator from creating a hazard. See WAC 296-842-11005 for voluntary use requirements.

(1) Make sure respirators are kept, at no cost to the employee, clean, sanitary and in good working order.

(2) Clean and disinfect respirators as often as specified in Table 8 of this section.

- Note:**
- Use required cleaning and disinfecting procedures in WAC 296-842-22015, **or** the manufacturer's procedures that:
    - Result in a clean and sanitary respirator;
    - Do not damage the respirator;
    - Do not harm the user;
  - Automated cleaning and disinfecting are permitted;
  - Cleaning and disinfecting may be done by a central facility as long as you make sure respirators provided are clean, sanitary, and function properly.

(3) Make sure respirators are assembled properly after cleaning or disinfecting.

**Table 8**

**Required Frequencies for Cleaning and Disinfecting Respirators**

If the respirator will be . . .	Then((§)) clean and disinfect the respirator . . .
• <b>Used exclusively</b> by one employee	• As often as needed to: <ul style="list-style-type: none"> <li>– Keep it clean and functional</li> </ul> <b>AND</b>

If the respirator will be . . .	Then((§)) clean and disinfect the respirator . . .
	– To prevent health hazards such as skin irritation
• Shared for nonemergency use <b>OR</b> • Used for fit-testing or training	• <b>Before</b> it is worn by another employee
• Shared for emergency use	• <b>After</b> each use so the respirator is immediately ready for use at all times

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-18005 Prevent sealing problems with tight-fitting respirators.**

**Exemption:** This section does not apply to respirator use that is voluntary. See WAC 296-842-11005 for voluntary use program requirements.

(1) Make sure employees use the procedure in WAC 296-842-22020 to perform a user seal check each time they put on their tight-fitting respirator.

(2) Make sure you do NOT permit respirator use if employees have a characteristic that interferes with the respirator facepiece seal or valve function. For example, stubble, moustaches, sideburns, bangs, hairlines, or scars between the face and the sealing surface of the respirator will affect the seal.

(3) Make sure corrective glasses or personal protective equipment (PPE) do NOT interfere with the facepiece seal. Examples of PPE include safety glasses, goggles, face-shields, clothing, and hard hats.

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-19005 Provide standby assistance in immediately dangerous to life or health (IDLH) conditions.**

**IMPORTANT:**

((WISHA)) DOSH currently uses the IDLH values in the 1990 NIOSH *Pocket Guide to Chemical Hazards* to determine the existence of IDLH conditions. You may use more recent editions of this guide. Visit [www.cdc.gov/niosh](http://www.cdc.gov/niosh) for more information.

(1) Provide at least two standby employees outside the IDLH area.

- Note:**
- You need only one standby employee **if** the IDLH condition is well characterized, will remain stable **AND** you can show one employee can adequately do **ALL** of the following:
- Monitor employees in the IDLH area;
  - Implement communication; and
  - Initiate rescue duties.

Table 10

(2) Train and equip standby employees to provide effective emergency rescue. Equip them with:

(a) A pressure-demand SCBA or a pressure-demand air-line respirator with an auxiliary SCBA, for each standby employee;

(b) Appropriate retrieval equipment, when it would help with the effective rescue of the entrant, or an equivalent means of rescue.

(3) Make sure standby employees maintain visual, voice, or signal line communication with employees in the IDLH area.

(4) Make sure that in the event of an emergency:

(a) Standby employees notify you or your designee before they enter the IDLH area to provide emergency rescue;

(b) You provide necessary assistance when notified.

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-22005 Use this medical questionnaire for medical evaluations.** Use the medical questionnaire in Table 10 when conducting medical evaluations.

- Note:**
- You may use a physical exam instead of this questionnaire if the exam covers the same information as the questionnaire.
  - You may use on-line questionnaires if the questions are the same and the requirements in WAC ((296-842-1400) 296-842-14005 of this chapter are met.
  - You may choose to send the questionnaire to the LHCP ahead of time, giving time to review it and add any necessary questions.
  - The LHCP determines what questions to add to the questionnaire, if any; however, questions in Parts 1-3 may not be deleted or substantially altered.

<b>((WISHA)) DOSH Medical Evaluation Questionnaire</b>	
<b>Employer instructions:</b>	
<ul style="list-style-type: none"> <li>• You may use on-line questionnaires if the requirements in WAC 296-842-14005 are met.</li> <li>• You must tell your employee how to deliver or send the completed questionnaire to the health care provider you have selected.</li> <li>• You must <b>NOT</b> review employees' questionnaires.</li> </ul>	
<b>Health care provider's instructions:</b>	
<ul style="list-style-type: none"> <li>• Review the information in this questionnaire and any additional information provided to you by the employer.</li> <li>• You may add questions to this questionnaire at your discretion; HOWEVER, questions in Parts 1-3 may not be deleted or substantially altered.</li> <li>• Follow-up evaluation is required for any positive response to questions 1-8 in Part 2, or questions 1-6 in Part 3. This might include: Phone consultations to evaluate positive responses, medical tests, and diagnostic procedures.</li> <li>• When your evaluation is complete, send a copy of your written recommendation to the employer AND employee.</li> </ul>	
<b>Employee information and instructions:</b>	
<ul style="list-style-type: none"> <li>• Your employer must allow you to answer this questionnaire during normal working hours, or at a time and place that is convenient to you.</li> <li>• Your employer or supervisor must not look at or review your answers at any time.</li> </ul>	

**Part 1 - Employee Background Information**  
**ALL employees must complete this part**  
**Please print**

1. Today's date: \_\_\_\_\_
2. Your name: \_\_\_\_\_
3. Your age (to nearest year): \_\_\_\_\_
4. Sex (circle one): Male / Female
5. Your height: \_\_\_ft. \_\_\_in.
6. Your weight: \_\_\_lbs.
7. Your job title: \_\_\_\_\_
8. A phone number where you can be reached by the health care professional who reviews this questionnaire (include Area Code): \_\_\_\_\_
9. The best time to call you at this number: \_\_\_\_\_
10. Has your employer told you how to contact the health care professional who will review this questionnaire?      Yes / No
11. Check the type of respirator(s) you will be using:
  - a. \_\_\_ N, R, or P filtering-facepiece respirator (for example, a dust mask, OR an N95 filtering-facepiece respirator).
  - b. Check all that apply.
    - Half mask    Full facepiece mask    Helmet hood    Escape

<input type="checkbox"/> Nonpowered cartridge or canister <input type="checkbox"/> Powered air-purifying cartridge respirator (PAPR) <input type="checkbox"/> Supplied-air or Air-line Self contained breathing apparatus (SCBA): <input type="checkbox"/> Demand or <input type="checkbox"/> Pressure demand Other: _____ 12. Have you previously worn a respirator?	Yes	/	No
If "yes," describe what type(s): _____			
<b>Part 2 - General Health Information</b> <b>ALL employees must complete this part</b> <b>Please circle "Yes" or "No"</b>			
1. Do you <i>currently</i> smoke tobacco, or have you smoked tobacco in the last month?	Yes	/	No
2. Have you <i>ever had</i> any of the following conditions?			
a. Seizures (fits):	Yes	/	No
b. Diabetes (sugar disease):	Yes	/	No
c. Allergic reactions that interfere with your breathing:	Yes	/	No
d. Claustrophobia (fear of closed-in places):	Yes	/	No
e. Trouble smelling odors:	Yes	/	No
3. Have you <i>ever had</i> any of the following pulmonary or lung problems?			
a. Asbestosis:	Yes	/	No
b. Asthma:	Yes	/	No
c. Chronic bronchitis:	Yes	/	No
d. Emphysema:	Yes	/	No
e. Pneumonia:	Yes	/	No
f. Tuberculosis:	Yes	/	No
g. Silicosis:	Yes	/	No
h. Pneumothorax (collapsed lung):	Yes	/	No
i. Lung cancer:	Yes	/	No
j. Broken ribs:	Yes	/	No
k. Any chest injuries or surgeries:	Yes	/	No
l. Any other lung problem that you have been told about:	Yes	/	No
4. Do you <i>currently</i> have any of the following symptoms of pulmonary or lung illness?			
a. Shortness of breath:	Yes	/	No
b. Shortness of breath when walking fast on level ground or walking up a slight hill or incline:	Yes	/	No
c. Shortness of breath when walking with other people at an ordinary pace on level ground:	Yes	/	No
d. Have to stop for breath when walking at your own pace on level ground:	Yes	/	No
e. Shortness of breath when washing or dressing yourself:	Yes	/	No
f. Shortness of breath that interferes with your job:	Yes	/	No
g. Coughing that produces phlegm (thick sputum):	Yes	/	No
h. Coughing that wakes you early in the morning:	Yes	/	No
i. Coughing that occurs mostly when you are lying down:	Yes	/	No
j. Coughing up blood in the last month:	Yes	/	No
k. Wheezing:	Yes	/	No
l. Wheezing that interferes with your job:	Yes	/	No
m. Chest pain when you breathe deeply:	Yes	/	No
n. Any other symptoms that you think may be related to lung problems:	Yes	/	No
5. Have you <i>ever had</i> any of the following cardiovascular or heart problems?	Yes	/	No
a. Heart attack:	Yes	/	No
b. Stroke:	Yes	/	No
c. Angina:	Yes	/	No

d. Heart failure:	Yes	/	No
e. Swelling in your legs or feet (not caused by walking):	Yes	/	No
f. Heart arrhythmia (heart beating irregularly):	Yes	/	No
g. High blood pressure:	Yes	/	No
h. Any other heart problem that you have been told about:	Yes	/	No
6. Have you <i>ever had</i> any of the following cardiovascular or heart symptoms?			
a. Frequent pain or tightness in your chest:	Yes	/	No
b. Pain or tightness in your chest during physical activity:	Yes	/	No
c. Pain or tightness in your chest that interferes with your job:	Yes	/	No
d. In the past 2 years, have you noticed your heart skipping or missing a beat:	Yes	/	No
e. Heartburn or indigestion that is not related to eating:	Yes	/	No
f. Any other symptoms that you think may be related to heart or circulation problems:	Yes	/	No
7. Do you <i>currently</i> take medication for any of the following problems?	Yes	/	No
a. Breathing or lung problems:	Yes	/	No
b. Heart trouble:	Yes	/	No
c. Blood pressure:	Yes	/	No
d. Seizures (fits):	Yes	/	No
8. If you have used a respirator, have you <i>ever had</i> any of the following problems? (If you have never used a respirator, check the following space and go to question 9:) ____			
a. Eye irritation:	Yes	/	No
b. Skin allergies or rashes:	Yes	/	No
c. Anxiety:	Yes	/	No
d. General weakness or fatigue:	Yes	/	No
e. Any other problem that interferes with your use of a respirator?	Yes	/	No
9. Would you like to talk to the health care professional who will review this questionnaire about your answers?	Yes	/	No
<b>Part 3 - Additional Questions for Users of Full-Facepiece Respirators or SCBAs</b>			
<b>Please circle "Yes" or "No"</b>			
1. Have you <i>ever lost</i> vision in either eye (temporarily or permanently)?	Yes	/	No
2. Do you <i>currently</i> have any of these vision problems?			
a. Need to wear contact lenses:	Yes	/	No
b. Need to wear glasses:	Yes	/	No
c. Color blindness:	Yes	/	No
d. Any other eye or vision problem:	Yes	/	No
3. Have you <i>ever had</i> an injury to your ears, including a broken ear drum?	Yes	/	No
4. Do you <i>currently</i> have any of these hearing problems?			
a. Difficulty hearing:	Yes	/	No
b. Need to wear a hearing aid:	Yes	/	No
c. Any other hearing or ear problem:	Yes	/	No
5. Have you <i>ever had</i> a back injury?	Yes	/	No
6. Do you <i>currently</i> have any of the following musculoskeletal problems?			
a. Weakness in any of your arms, hands, legs, or feet:	Yes	/	No
b. Back pain:	Yes	/	No
c. Difficulty fully moving your arms and legs:	Yes	/	No
d. Pain or stiffness when you lean forward or backward at the waist:	Yes	/	No
e. Difficulty fully moving your head up or down:	Yes	/	No
f. Difficulty fully moving your head side to side:	Yes	/	No
g. Difficulty bending at your knees:	Yes	/	No

h. Difficulty squatting to the ground:	Yes	/	No
i. Climbing a flight of stairs or a ladder carrying more than 25 lbs:	Yes	/	No
j. Any other muscle or skeletal problem that interferes with using a respirator:	Yes	/	No
<b>Part 4 - Discretionary Questions</b>			
<b>Complete questions in this part ONLY IF your employer's health care provider says they are necessary</b>			
1. In your present job, are you working at high altitudes (over 5,000 feet) or in a place that has lower than normal amounts of oxygen?	Yes	/	No
If "yes," do you have feelings of dizziness, shortness of breath, pounding in your chest, or other symptoms when you are working under these conditions:	Yes	/	No
2. Have you ever been exposed (at work or home) to hazardous solvents, hazardous airborne chemicals (such as gases, fumes, or dust), OR have you come into skin contact with hazardous chemicals?	Yes	/	No
If "yes," name the chemicals, if you know them: _____			
3. Have you ever worked with any of the materials, or under any of the conditions, listed below:			
a. Asbestos?	Yes	/	No
b. Silica (for example, in sandblasting)?	Yes	/	No
c. Tungsten/cobalt (for example, grinding or welding this material)?	Yes	/	No
d. Beryllium?	Yes	/	No
e. Aluminum?	Yes	/	No
f. Coal (for example, mining)?	Yes	/	No
g. Iron?	Yes	/	No
h. Tin?	Yes	/	No
i. Dusty environments?	Yes	/	No
j. Any other hazardous exposures?	Yes	/	No
If "yes," describe these exposures: _____			
4. List any second jobs or side businesses you have: _____			
5. List your previous occupations: _____			
6. List your current and previous hobbies: _____			
7. Have you been in the military services?	Yes	/	No
If "yes," were you exposed to biological or chemical agents (either in training or combat)?	Yes	/	No
8. Have you ever worked on a HAZMAT team?	Yes	/	No
9. Other than medications for breathing and lung problems, heart trouble, blood pressure, and seizures mentioned earlier in this questionnaire, are you taking any other medications for any reason (including over-the-counter medications)?	Yes	/	No
If "yes," name the medications if you know them: _____			
10. Will you be using any of the following items with your respirator(s)?			
a. HEPA filters:	Yes	/	No
b. Canisters (for example, gas masks):	Yes	/	No
c. Cartridges:	Yes	/	No
11. How often are you expected to use the respirator(s)?			
a. Escape-only (no rescue):	Yes	/	No
b. Emergency rescue only:	Yes	/	No
c. Less than 5 hours <i>per week</i> :	Yes	/	No
d. Less than 2 hours <i>per day</i> :	Yes	/	No
e. 2 to 4 hours per day:	Yes	/	No
f. Over 4 hours per day:			
12. During the period you are using the respirator(s), is your work effort:			
a. <i>Light</i> (less than 200 kcal per hour):	Yes	/	No
If "yes," how long does this period last during the average shift: ____hrs. ____mins.			

Examples of a light work effort are sitting while writing, typing, drafting, or performing light assembly work; or standing while operating a drill press (1-3 lbs.) or controlling machines.

b. *Moderate* (200 to 350 kcal per hour): Yes / No  
 If "yes," how long does this period last during the average shift: \_\_\_\_hrs. \_\_\_\_mins.

Examples of moderate work effort are sitting while nailing or filing; driving a truck or bus in urban traffic; standing while drilling, nailing, performing assembly work, or transferring a moderate load (about 35 lbs.) at trunk level; walking on a level surface about 2 mph or down a 5-degree grade about 3 mph; or pushing a wheelbarrow with a heavy load (about 100 lbs.) on a level surface.

c. *Heavy* (above 350 kcal per hour): Yes / No  
 If "yes," how long does this period last during the average shift: \_\_\_\_hrs. \_\_\_\_mins.

Examples of heavy work are lifting a heavy load (about 50 lbs.) from the floor to your waist or shoulder; working on a loading dock; shoveling; standing while bricklaying or chipping castings; walking up an 8-degree grade about 2 mph; climbing stairs with a heavy load (about 50 lbs.).

13. Will you be wearing protective clothing and/or equipment (other than the respirator) when you are using your respirator? Yes / No  
 If "yes," describe this protective clothing and/or equipment: \_\_\_\_\_

14. Will you be working under hot conditions (temperature exceeding 77°F): Yes / No

15. Will you be working under humid conditions: Yes / No

16. Describe the work you will be doing while using your respirator(s): \_\_\_\_\_

17. Describe any special or hazardous conditions you might encounter when you are using your respirator(s) (for example, confined spaces, life-threatening gases): \_\_\_\_\_

18. Provide the following information, if you know it, for each toxic substance that you will be exposed to when you are using your respirator(s):

Name of the first toxic substance: \_\_\_\_\_  
 Estimated maximum exposure level per shift: \_\_\_\_\_  
 Duration of exposure per shift: \_\_\_\_\_

Name of the second toxic substance: \_\_\_\_\_  
 Estimated maximum exposure level per shift: \_\_\_\_\_  
 Duration of exposure per shift: \_\_\_\_\_

Name of the third toxic substance: \_\_\_\_\_  
 Estimated maximum exposure level per shift: \_\_\_\_\_  
 Duration of exposure per shift: \_\_\_\_\_

The name of any other toxic substances that you will be exposed to while using your respirator: \_\_\_\_\_

19. Describe any special responsibilities you will have while using your respirator(s) that may affect the safety and well being of others (for example, rescue, security): \_\_\_\_\_

**AMENDATORY SECTION** (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-22010 Follow these fit-testing procedures for tight-fitting respirators.**

**IMPORTANT:**

- This section contains procedural requirements that apply during actual fit testing.
- See WAC 296-842-15005 of this chapter for fit-testing requirements that apply to your overall program.

**Exemptions:** This section does NOT apply to employees who:

- Voluntarily use respirators;

**OR**

- Are required to use mouthpiece respirators.

(1) Follow the procedure in Table 11 to choose a respirator for fit testing:

(a) Prior to conducting fit tests;

**AND**

(b) Any time your employee must select a different respirator such as when a previously selected respirator fails a test.

(2) Select and follow at least one of the following fit test procedures:

(a) Qualitative fit-test procedures:

- ◆ Isoamyl acetate vapor (IAA, banana oil) in Table 12;
- ◆ Saccharine aerosol in Table 13;
- ◆ Bitrex™ aerosol in Table 14;

- ◆ Irritant smoke in Table 15<sub>2</sub>
- (b) Quantitative fit-test procedures:
  - ◆ Ambient aerosol condensation nuclei counter such as the Portacount™, in Table 16<sub>2</sub>
  - ◆ Controlled negative pressure (CNP) such as the Fit-Tester 3000™, in Table 17<sub>2</sub>
  - ◆ Generated aerosol in Table 18<sub>2</sub>
- (3) Make sure employees perform the appropriate fit-test exercises listed in Table 19.
- (4) Clean and maintain equipment according to the manufacturer's instructions.
- (5) Make sure during fit testing employees wear any safety equipment that could:
  - (a) Interfere with respirator fit;
  - AND**
  - (b) Be worn in the workplace. For example, chemical splash goggles.
- (6) Check, prior to fit testing, for conditions that may interfere with the respirator seal or valve functions. If you find such conditions, do **NOT** conduct fit testing for that individual.
 

**Note:** Examples of conditions that may interfere with the respirator seal or valve functions include:

  - Moustache, stubble, sideburns, bangs, hairline, and other types of facial hair in areas where the respirator facepiece seals or that interfere with valve function.
  - Temple bars of corrective eyewear or headgear that extend through the face seal area.
- (7) Follow the appropriate fit test exercises in Table 19 as indicated.

**Table 11**

<b>Procedure for Choosing a Respirator for Fit Testing</b>
<p><b>1. Inform</b> the employee:</p> <ul style="list-style-type: none"> <li>• To choose the most comfortable respirator that provides an adequate fit</li> <li>• That each respirator sample represents a different size and, if more than one model is supplied, a different shape</li> <li>• That if fitted and used properly, the respirator chosen will provide adequate protection</li> </ul> <p><b>2. Provide</b> a mirror and show the employee how to:</p> <ul style="list-style-type: none"> <li>• Put on the respirator</li> <li>• Position the respirator on the face</li> <li>• Set strap tension.</li> </ul> <p><b>Note:</b> This instruction does NOT take the place of the employee's formal training since it is only a review.</p> <p><b>3. Review</b> with the employee how to check for a comfortable fit around the nose, cheeks and other areas on the face.</p> <ul style="list-style-type: none"> <li>• Tell the employee the respirator should be comfortable while talking or wearing eye protection.</li> </ul> <p><b>4. Have the employee</b> hold each facepiece against the face, taking enough time to compare the fit of each. The employee can then either:</p>

<b>Procedure for Choosing a Respirator for Fit Testing</b>
<ul style="list-style-type: none"> <li>• Reject any facepiece that clearly does not feel comfortable or fit adequately</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>• Choose which facepiece is most acceptable and which are less acceptable, if any.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Supply as many respirator models and sizes as needed to make sure the employee finds a respirator that is acceptable and fits correctly</li> <li>• To save time later, during this step note the more acceptable facepieces in case the one chosen fails the fit test or proves unacceptable later.</li> </ul> <p><b>5. Have the employee wear</b> the most acceptable respirator for <b>AT LEAST 5</b> minutes to evaluate comfort and fit. Do <b>ALL</b> of the following during this time:</p> <ul style="list-style-type: none"> <li>• Ask the employee to observe and comment about the comfort and fit:                     <ul style="list-style-type: none"> <li>– Around the nose, cheeks, and other areas on the face</li> <li>– When talking or wearing eye protection</li> </ul> </li> <li>• Have the employee put on the respirator and adjust the straps until they show proficiency</li> <li>• Evaluate the respirator's general fit by checking:                     <ul style="list-style-type: none"> <li>– Proper chin placement</li> <li>– Properly tightened straps (do <b>NOT</b> over tighten)</li> <li>– Acceptable fit across the nose bridge</li> <li>– Respirator size; it must span the distance from nose to chin</li> <li>– To see if the respirator stays in position</li> </ul> </li> <li>• Have the employee complete a successful seal check as specified in WAC ((296-842-22025)) <u>296-842-22020</u> of this chapter                     <ul style="list-style-type: none"> <li>– Prior to the seal check they must settle the respirator on their face by taking a few slow deep breaths <b>WHILE SLOWLY:</b> <ul style="list-style-type: none"> <li>■ Moving their head from side-to-side</li> </ul> </li> <li><b>AND</b></li> <li>■ Up and down.</li> </ul> </li> </ul> <p><b>6. If the employee finds the respirator unacceptable,</b> allow the employee to select another one and return to Step 5. Otherwise, proceed to Step 7.</p> <p><b>7. Before starting the fit test,</b> you must:</p> <ul style="list-style-type: none"> <li>• Describe the fit test including screening procedures, employee responsibilities, and test exercises</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• Make sure the employee wears the respirator <b>AT LEAST</b> five minutes.</li> </ul>



Table 12

<b>Isoamyl Acetate (Banana Oil) Vapor Test Procedure</b>
<p><b>Important:</b></p> <ul style="list-style-type: none"> <li>• This is a qualitative fit-test (QLFT) procedure</li> <li>• The success of this test depends on preserving the employee's odor sensitivity to isoamyl acetate (IAA) vapor                             <ul style="list-style-type: none"> <li>– Vapor accumulations in ambient air can decrease odor sensitivity. To prevent this:                                     <ul style="list-style-type: none"> <li>■ Prepare <b>ALL</b> solutions in a location separate from screening and test areas</li> <li>■ Conduct screening and tests in separate well-ventilated rooms. For example, use an exhaust fan or laboratory hood to prevent IAA vapor from accumulating in the room air</li> </ul> </li> <li>– Always use odor-free water, for example, distilled or spring water that is 25°C (77°F).</li> </ul> </li> <li>• Isoamyl acetate is also known as isopentyl acetate.</li> </ul>
<b>Screening Preparations</b>
<p><b>Important:</b></p> <p>Odor threshold screening determines if the employee can detect weak concentrations of IAA vapor.</p> <ol style="list-style-type: none"> <li>1. Choose an appropriate location to conduct screening.                             <ul style="list-style-type: none"> <li>• Conduct screening and tests in separate well-ventilated rooms.</li> </ul> </li> <li>2. Prepare a stock solution <b>AT LEAST</b> weekly as follows:                             <ul style="list-style-type: none"> <li>• Add one milliliter (ml) of pure IAA to 800 ml of odor-free water in a one-liter glass jar with a metal lid using a measuring dropper or pipette</li> <li>• Seal the jar with the lid and shake it for 30 seconds</li> <li>• Clean the dropper or pipette.</li> </ul> </li> <li>3. Prepare the odor test solution daily as follows:                             <ul style="list-style-type: none"> <li>• Add 0.4 ml from the stock solution to 500 ml of water in a one liter glass jar with a metal lid using a clean pipette or dropper</li> <li>• Seal the jar with the lid and shake it for 30 seconds</li> <li>• Let this solution stand for 2-3 minutes so the IAA concentration above the liquid reaches equilibrium</li> <li>• Label this jar so you know the contents but the employee cannot know its contents, for example, "1."</li> </ul> </li> </ol> <p><b>Note:</b> To maintain the integrity of the test, use labels that peel off easily <b>AND</b> periodically switch the labels.</p> <ol style="list-style-type: none"> <li>4. Prepare a "test blank" solution as follows:                             <ul style="list-style-type: none"> <li>• Add 500 ml of odor-free water to a one liter glass jar with a metal lid</li> <li>• Seal the jar</li> <li>• Label the jar so you know the contents but the employee cannot know its contents.</li> </ul> </li> </ol>

<b>Isoamyl Acetate (Banana Oil) Vapor Test Procedure</b>
<ol style="list-style-type: none"> <li>5. Type or neatly print the following instructions on a card and place it on the table in front of the two test jars:                             <p style="margin-left: 40px;"><i>"The purpose of this test is to find out if you can smell banana oil at a low concentration. While both jars contain water, one <b>ALSO</b> contains a small amount of banana oil.</i></p> <p style="margin-left: 40px;"><i>Make sure the lid is secure then pick up a jar and shake it for two seconds. Open the jar and sniff at the opening. Repeat this for the second jar.</i></p> <p style="margin-left: 40px;"><i>Tell the individual conducting the fit test which jar contains banana oil."</i></p> </li> </ol>
<b>Test Preparations</b>
<ol style="list-style-type: none"> <li>6. Choose an appropriate location to conduct fit testing.                             <ul style="list-style-type: none"> <li>• Conduct screening and tests in separate well-ventilated rooms.</li> </ul> </li> <li>7. Assemble the fit test enclosure in the room.                             <ul style="list-style-type: none"> <li>• Invert a clear 55-gallon drum liner over a circular 2-foot diameter frame made of plywood or other light-weight rigid material <b>OR</b> construct a similar enclosure using plastic sheeting</li> <li>• Hang the frame with the plastic covering so the top of the enclosure is about six inches above the employee's head</li> <li>• Attach a small hook inside top center of the enclosure</li> <li>• Tape a copy of the test exercises (see Table 19) to the inside of the test enclosure where the employee can read it.</li> </ul> </li> <li>8. Have organic vapor cartridges or equivalent on hand for each employee's chosen respirator.</li> <li>9. Have ready a 6 x 5-inch piece of paper towel or other porous absorbent single-ply material <b>AND</b> 0.75 ml of pure IAA. Do <b>NOT</b> apply IAA yet.</li> </ol> <p><b>Note:</b> As an alternative to using the paper towel, you may use an IAA test swab <b>OR</b> ampoule if it has been demonstrated to generate an equivalent test concentration.</p>
<b>Screening</b>
<ol style="list-style-type: none"> <li>10. Have the employee, while <b>NOT</b> wearing a respirator, follow the instructions on the card provided.                             <ul style="list-style-type: none"> <li>• If the employee correctly identifies the jar containing IAA, proceed to conduct testing (Step 11)</li> <li>• If the employee is <b>NOT</b> able to correctly identify the jar containing IAA, you must <b>STOP</b> and use a different fit test protocol.</li> </ul> </li> </ol>
<b>Test</b>
<ol style="list-style-type: none"> <li>11. <b>BEFORE</b> entering the fit test room, have the employee attach cartridges, put on, properly adjust, and seal check the respirator. Have the employee enter the test enclosure.</li> <li>12. Wet the paper towel with 0.75 ml of <b>pure</b> IAA <b>AND</b> fold it in half.</li> </ol>

<b>Isoamyl Acetate (Banana Oil) Vapor Test Procedure</b>
<p>13. Pass the paper towel to the employee inside the enclosure <b>AND</b> instruct the employee to hang it on the hook at the top of the enclosure.</p> <p>14. Wait two minutes for the IAA vapor to fill the enclosure.</p> <ul style="list-style-type: none"> <li>• While waiting, explain the fit test, including the purpose of the test exercises, the importance of cooperation, and that you must be informed if a banana-like odor is detected during the test</li> <li>• You may also demonstrate the test exercises.</li> </ul> <p>15. Have the employee perform the appropriate fit-test exercises in Table 19.</p> <ul style="list-style-type: none"> <li>• If the employee does <b>NOT</b> detect IAA while performing test exercises, the fit test has been <b>PASSED</b>. Proceed as follows:                     <ul style="list-style-type: none"> <li>– <b>BEFORE</b> leaving the enclosure, have the employee break the respirator seal and inhale. If they <b>detect</b> IAA, the test is valid</li> <li>– When exiting the employee must remove the paper towel and give it to the individual conducting the fit test. This prevents IAA vapor from building up in the enclosure during subsequent tests</li> <li>– The individual conducting the fit test must keep used paper towels in a self-sealing plastic bag to prevent area contamination</li> </ul> </li> <li>• If the employee detects IAA during any test exercise, the fit test has <b>FAILED</b>. <b>STOP</b> and have the employee do the following:                     <ul style="list-style-type: none"> <li>– Quickly return to the selection room to remove the respirator. This avoids decreasing the employee's odor sensitivity</li> <li>– Select another respirator</li> <li>– Repeat screening and testing                             <ul style="list-style-type: none"> <li>■ At this stage, if the employee fails the screening part of this procedure, the employee can repeat it <b>AFTER</b> waiting at least five minutes for odor sensitivity to return.</li> </ul> </li> </ul> </li> </ul>

**Table 13**

<b>Saccharin Aerosol Test Procedure</b>
<b>Screening Preparations</b>
<p><b>Important:</b></p> <ul style="list-style-type: none"> <li>• This is a qualitative fit-test (QLFT) procedure</li> <li>• Taste threshold screening determines whether the employee being tested can detect the taste of saccharin</li> </ul>

<b>Saccharin Aerosol Test Procedure</b>
<b>Screening Preparations</b>
<ul style="list-style-type: none"> <li>– The employee must <b>NOT</b> eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes <b>BEFORE</b> the fit test. Sweet foods or drink consumed before the test may make the employee unable to detect saccharin during screening</li> <li>– Nebulizers must be thoroughly rinsed in water and shaken dry:                     <ul style="list-style-type: none"> <li>■ Each morning and afternoon</li> </ul> </li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>■ At least every four hours.</li> </ul> <ul style="list-style-type: none"> <li>• You may use commercially prepared solutions if they meet the requirements in this procedure.</li> </ul> <p>1. Obtain a test enclosure (hood) that meets the following specifications:</p> <ul style="list-style-type: none"> <li>• Twelve inches in diameter by fourteen inches tall</li> <li>• A clear front portion</li> <li>• Enough space inside to allow free movement of the head when a respirator is worn</li> <li>• A 3/4 inch (or 1.9 centimeter) hole to accommodate the nebulizer nozzle. The hole must line up in front of the wearer's nose and mouth.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• An enclosure similar to the 3M hood assembly, parts #FT 14 and #FT 15 combined, meets these specifications</li> <li>• This enclosure can also be used for testing.</li> </ul> <p>2. Obtain and assemble two clean DeVilbiss Model 40 Inhalation Medication Nebulizers <b>OR</b> equivalent.</p> <p>3. Prepare the screening solution as follows:</p> <ul style="list-style-type: none"> <li>• Dissolve 830.0 milligrams of sodium saccharin USP in 100 ml of warm distilled water</li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>• <b>IF</b> you have already prepared the fit-test solution, you can make the screening solution by adding 1 ml of this solution to 100 ml of distilled water.</li> </ul> <p>4. Add about 1 ml of the screening solution to one of the nebulizers.</p> <ul style="list-style-type: none"> <li>• Mark this nebulizer to distinguish it from the one to be used for fit testing.</li> </ul>
<b>Test Preparations</b>
<p>5. Prepare the fit-test solution as follows:</p> <ul style="list-style-type: none"> <li>• Add 83.0 grams of sodium saccharin to 100 ml of warm water.</li> </ul> <p>6. Add about 1 ml of the test solution to the second nebulizer.</p> <ul style="list-style-type: none"> <li>• Mark this nebulizer to distinguish it from the one used for screening</li> </ul> <p>7. Have particulate filters ready for the employee's chosen respirator or have filtering-facepiece respirators ready.</p>

<b>Saccharin Aerosol Test Procedure</b>
<b>Screening Preparations</b>
<b>Screening</b>
<p>8. Have the employee, while NOT wearing a respirator, put on the test enclosure.</p> <p>9. Instruct the employee to:</p> <ul style="list-style-type: none"> <li>• Breath through a slightly open mouth with tongue extended during screening AND testing</li> <li>• Immediately report when a sweet taste is detected.</li> </ul> <p>10. Insert the nebulizer into the front hole of the test enclosure AND administer saccharin as follows:</p> <ul style="list-style-type: none"> <li>• Direct the nozzle away from the employee's nose and mouth</li> <li>• Complete 10 squeezes in rapid succession</li> <li>• Each time firmly squeeze the bulb so it collapses completely, then release and allow it to fully expand.</li> </ul> <p>11. Ask the employee if a sweet taste is detected.</p> <ul style="list-style-type: none"> <li>• If <b>YES</b>, screening is completed. Proceed to conduct testing, Step 14, <b>AFTER</b> you: <ul style="list-style-type: none"> <li>– Ask the employee to remember the taste for reference during the fit test</li> <li>– Note the employee's taste threshold as "10" regardless of the number of squeezes actually completed</li> </ul> </li> <li>• If <b>NO</b>, screening must continue. Proceed to Step 12.</li> </ul> <p>12. Repeat with 10 more squeezes. Then follow Step 11 again; <b>EXCEPT</b> this time note the employee's taste threshold as "20" <b>IF</b> a sweet taste is reported.</p> <ul style="list-style-type: none"> <li>• If a sweet taste is still <b>NOT</b> detected, repeat with 10 more squeezes and follow Step 11 one last time; <b>EXCEPT</b> this time note "30" for the taste threshold <b>IF</b> a sweet taste is reported.</li> </ul> <p>13. If <b>NO</b> sweet taste is reported after 30 squeezes, you must <b>STOP</b> and choose a different fit-test protocol for the employee.</p>
<b>Test</b>
<p><b>Important!</b></p> <ul style="list-style-type: none"> <li>• Periodically check nebulizers to make sure they do not clog during use. A test is <b>NOT</b> valid if the nebulizer is clogged at the end of the test.</li> </ul> <p>14. Have the employee attach particulate filters, put on, properly adjust, and seal check the respirator. Have the employee put on the test enclosure (hood).</p> <p>15. Instruct the employee to immediately report if a sweet taste is detected.</p> <p>16. Insert the nebulizer into the front hole of the test enclosure AND administer the same number of squeezes, either 10, 20, or 30, as noted during screening.</p> <p>17. Have the employee perform the appropriate fit-test exercises as described in Table 19. During this step:</p>

<b>Saccharin Aerosol Test Procedure</b>
<b>Screening Preparations</b>
<ul style="list-style-type: none"> <li>• Replenish the aerosol in the hood <b>EVERY</b> 30 seconds using 1/2 the number of squeezes used in Step 16, either 5, 10, or 15</li> <li>• The employee must report if a sweet taste is detected: <ul style="list-style-type: none"> <li>– If <b>NO</b> saccharin is tasted, the test has been <b>PASSED</b> <ul style="list-style-type: none"> <li>■ If saccharin is tasted the test has <b>FAILED</b>, have the employee select another respirator</li> </ul> </li> <li>AND</li> <li>■ Repeat screening and testing.</li> </ul> </li> </ul>

**Table 14**

<b>Bitrex™ Aerosol Test Procedure</b>
<p><b>Important!</b></p> <ul style="list-style-type: none"> <li>• This is a qualitative fit-test (QLFT) procedure</li> <li>• Bitrex™ (denatonium benzoate) is routinely used as a taste aversion agent in household liquids that children should not drink and is endorsed by the American Medical Association, the National Safety Council, and the American Association of Poison Control Centers</li> <li>• The employee must <b>NOT</b> eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes <b>BEFORE</b> the fit test.</li> </ul>
<b>Screening Preparations</b>
<p><b>Important!</b></p> <ul style="list-style-type: none"> <li>• Taste threshold screening determines whether the employee being tested can detect the taste of Bitrex™</li> <li>• Nebulizers must be thoroughly rinsed in water and shaken dry: <ul style="list-style-type: none"> <li>– Each morning and afternoon</li> </ul> </li> <li>OR</li> <li>– At least every four hours.</li> <li>• You may use commercially prepared solutions if they meet the requirements in this procedure.</li> </ul> <p>1. Obtain a test enclosure that meets the following specifications:</p> <ul style="list-style-type: none"> <li>• Twelve inches in diameter by fourteen inches tall</li> <li>• A clear front portion</li> <li>• Enough space inside the front to allow free movement of the head when a respirator is worn</li> <li>• 3/4 inch (or 1.9 centimeter) hole to accommodate the nebulizer nozzle. The hole must line up in front of the wearer's nose and mouth.</li> </ul>

<b>Bitrex™ Aerosol Test Procedure</b>
<p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• An enclosure similar to the 3M hood assembly, parts #FT 14 and #FT 15 combined, meets these specifications</li> <li>• This enclosure can also be used for testing.</li> </ul> <p>2. Obtain and assemble two clean DeVilbiss Model 40 Inhalation Medication Nebulizers OR equivalent:</p> <p>3. Prepare the screening solution as follows:</p> <ul style="list-style-type: none"> <li>• Make up a 5% salt solution by dissolving 5.0 grams of salt (sodium chloride) into 100 ml of distilled water</li> <li>• Dissolve 13.5 milligrams of Bitrex™ in the salt solution.</li> </ul> <p>4. Add about 1 ml of the screening solution to one of the nebulizers.</p> <ul style="list-style-type: none"> <li>• Mark this nebulizer to distinguish it from the one to be used for fit testing.</li> </ul>
<b>Test Preparations</b>
<p>5. Prepare the fit test solution.</p> <ul style="list-style-type: none"> <li>• Dissolve 10.0 grams of salt (sodium chloride) into 200 ml of distilled water</li> <li>• Add 337.5 milligrams of Bitrex™ to the warmed salt solution.</li> </ul> <p>6. Add about 1 ml of the test solution to the second nebulizer.</p> <ul style="list-style-type: none"> <li>• Mark this nebulizer to distinguish it from the one used for screening.</li> </ul> <p>7. Have particulate filters ready for the employee's chosen respirator or have filtering-facepiece respirators ready.</p>
<b>Screening</b>
<p><b>Important:</b> The employee must <b>NOT</b> eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes <b>BEFORE</b> the screening and test</p> <p>8. Have the employee, while <b>NOT</b> wearing a respirator, put on the test enclosure.</p> <p>9. Instruct the employee to:</p> <ul style="list-style-type: none"> <li>• Breathe through a slightly opened mouth with tongue extended during screening <b>AND</b> testing</li> <li>• Immediately report when a bitter taste is detected.</li> </ul> <p>10. Insert the nebulizer into the front hole of the test enclosure <b>AND</b> administer Bitrex™ as follows:</p> <ul style="list-style-type: none"> <li>• Direct the nozzle away from the employee's nose and mouth</li> <li>• Complete 10 squeezes in rapid succession</li> <li>• Each time firmly squeeze the bulb so it collapses completely, then release and allow it to fully expand.</li> </ul> <p>11. Ask the employee whether a bitter taste is detected.</p> <ul style="list-style-type: none"> <li>• If <b>YES</b>, screening is completed. Proceed to conduct testing, Step 14, <b>AFTER</b> you:</li> </ul>

<b>Bitrex™ Aerosol Test Procedure</b>
<ul style="list-style-type: none"> <li>– Ask the employee to remember the taste for reference during the fit test</li> <li>– Note the employee's taste threshold as "10," regardless of the number of squeezes actually completed</li> </ul> <ul style="list-style-type: none"> <li>• If <b>NO</b>, screening must continue. Proceed to Step 12.</li> </ul> <p>12. Repeat with 10 more squeezes. Then follow Step 11 again; <b>EXCEPT</b> this time note the employee's taste threshold as "20" <b>IF</b> a bitter taste is reported.</p> <ul style="list-style-type: none"> <li>• If a bitter taste is still <b>NOT</b> detected repeat with 10 more squeezes and follow Step 11 one last time; <b>EXCEPT</b> this time note "30" for the taste threshold <b>IF</b> a bitter taste is reported.</li> </ul> <p>13. If <b>NO</b> bitter taste is reported after 30 squeezes, you must <b>STOP</b> and choose a different fit-test protocol for the employee.</p>
<b>Test</b>
<p>14. Have the employee attach particulate filters, put on, properly adjust, and seal check the respirator. Have the employee put on the test enclosure.</p> <p>15. Instruct the employee to:</p> <ul style="list-style-type: none"> <li>• Breathe through a slightly opened mouth with tongue extended during screening <b>AND</b> testing</li> <li>• Immediately report when a bitter taste is detected.</li> </ul> <p>16. Insert the nebulizer into the front hole of the test enclosure <b>AND</b> administer the same number of squeezes, either 10, 20, or 30, as noted during screening.</p> <p>17. Have the employee perform the appropriate fit-test exercises as described in Table 19. During this step:</p> <ul style="list-style-type: none"> <li>• Replenish the aerosol in the hood <b>EVERY</b> 30 seconds using 1/2 the number of squeezes used in Step 16, either 5, 10, or 15</li> <li>• The employee must report if a bitter taste is detected:             <ul style="list-style-type: none"> <li>– If <b>NO</b> Bitrex™ is tasted, the test has been <b>PASSED</b></li> <li>– If Bitrex™ is tasted the test has <b>FAILED</b>.((-))</li> </ul>             Have the employee:             <ul style="list-style-type: none"> <li>■ Select another respirator</li> </ul> </li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>■ Repeat all screening and testing steps.</li> </ul>

**Table 15**

<b>Irritant Smoke (Stannic Chloride) Test Procedure</b>
<p><b>Important:</b></p> <ul style="list-style-type: none"> <li>• <b>DO NOT USE A TEST ENCLOSURE OR HOOD FOR THIS FIT TEST!</b></li> <li>• This is a qualitative fit-test (QLFT) procedure</li> </ul>

<p><b>Irritant Smoke (Stannic Chloride) Test Procedure</b></p> <ul style="list-style-type: none"> <li>• During this test an employee is exposed to irritating smoke containing hydrochloric acid produced by a stannic chloride ventilation smoke tube to detect leakage. The smoke will irritate eyes, lungs, and nasal passages</li> <li>• Employee sensitivity varies, and certain employees may respond more intensely than others exposed to irritant smoke. The individual conducting the fit test must take precautions to minimize the employees' exposure to irritant smoke</li> <li>• Conduct fit testing in an area with adequate ventilation to prevent exposure of the individual conducting the fit test and build-up of irritant smoke in the ambient air.</li> </ul>
<p><b>Screening AND Test Preparations</b></p> <p><b>Important:</b> Sensitivity screening is necessary to determine whether the employee can detect a weak concentration of irritant smoke AND whether any gross facepiece leakage is detected.</p> <ol style="list-style-type: none"> <li>1. Obtain only stannic chloride (ventilation) smoke tubes, AND an aspirator squeeze bulb OR use a low-flow air pump set to deliver 200 milliliters of air flow per minute.</li> <li>2. Equip the employee's chosen respirator with P100 series filters if a negative pressure air-purifying respirator will be tested. If a powered air-purifying respirator (PAPR) will be tested equip the respirator with high-efficiency particulate air (HEPA) filters.</li> </ol>
<p><b>Screening</b></p> <p><b>Important!</b> When performing sensitivity screening checks use only the <b>MINIMUM</b> amount of smoke necessary to elicit a response from the employee.</p> <ol style="list-style-type: none"> <li>3. Advise the employee that the smoke can be irritating to eyes, lungs, and nasal passages AND instruct the employee to keep eyes closed while exposed.</li> <li>4. Break both ends of the ventilation smoke tube AND fit a short piece of plastic tubing, for example, two-to-six inches of tygon tubing, over one end to prevent exposure to the sharp end of the tube. Connect the other end to an aspirator bulb or a low-flow air pump set to deliver a flow of 200 ml per minute.</li> <li>5. While the employee is <b>NOT</b> wearing a respirator, have the employee smell a weak concentration of irritant smoke to become familiar with its irritating properties. <ul style="list-style-type: none"> <li>• Carefully direct a small amount of irritant smoke toward the employee.</li> </ul> </li> </ol>
<p><b>Test</b></p> <p>Test 6. Have the employee attach respirator filters, put on, adjust, and seal check the respirator without assistance. The employee must be proficient at these tasks.</p>

<p><b>Irritant Smoke (Stannic Chloride) Test Procedure</b></p> <ol style="list-style-type: none"> <li>7. Remind the employee to keep eyes closed during testing.</li> <li>8. Direct a stream of irritant smoke toward the respirator's face seal area as follows: <ul style="list-style-type: none"> <li>• Begin at least 12 inches from the facepiece AND move the smoke around the whole perimeter of the mask</li> <li>• Gradually make two more passes around the perimeter of the facepiece, moving to within 6 inches of the respirator</li> <li>• <b>STOP</b> at any time the employee detects smoke in the facepiece. If this occurs a different respirator will need to be chosen and tested, beginning with sensitivity screening.</li> </ul> </li> <li>9. Have the employee perform appropriate fit-test exercises in Table 19 <b>IF</b> the employee has <b>NOT</b> had an involuntary response such as evidence of coughing, flinching, or other response, <b>OR</b> detected smoke in the facepiece. <ul style="list-style-type: none"> <li>• Continue to direct smoke from a distance of 6 inches around the facepiece perimeter <ul style="list-style-type: none"> <li>– If smoke is detected at any time the test has <b>FAILED</b>. A different respirator must be chosen and tested, starting with sensitivity screening</li> <li>– If <b>NO</b> smoke is detected proceed to Step 10.</li> </ul> </li> </ul> </li> <li>10. Have the employee remove the respirator AND perform another sensitivity screening check as follows: <ul style="list-style-type: none"> <li>• Continue to use the smoke tube used for fit testing</li> <li>• Carefully direct a <b>SMALL</b> amount of irritant smoke toward the employee <ul style="list-style-type: none"> <li>– The test has been <b>PASSED IF</b> the employee responds to the smoke</li> <li>– The fit test is <b>VOIDED IF</b> the employee does <b>NOT</b> respond to the smoke.</li> </ul> </li> </ul> </li> </ol>
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**Table 16**

<p><b>Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure</b></p> <p><b>Important:</b></p> <ul style="list-style-type: none"> <li>• This is a quantitative (QNFT) fit-test procedure</li> <li>• This method uses a particle counting instrument that measures and compares the particle concentration both inside and outside the respirator facepiece while the employee performs a series of test exercises</li> <li>• Particles in the ambient air are used as the test aerosol.</li> </ul>
<p><b>Test Preparations</b></p> <ol style="list-style-type: none"> <li>1. Obtain a test instrument such as a Portacount™.</li> <li>2. Have probed respirators available for each respirator model and size the employer uses, <b>OR</b> have a sampling adapter available if the employee's actual or chosen respirator will be tested.</li> </ol>

<b>Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure</b>
<p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• A probed respirator has a special fitting installed on the facepiece designed to connect with the end of the test instrument's plastic sampling tube so that air samples can be taken inside the facepiece. Probed respirators can be obtained from the respirator manufacturer, or distributor, <b>AND</b> can only be used for fit-testing purposes</li> <li>• Contact TSI Inc., <b>OR</b> the respirator's manufacturer to obtain probed respirators or facepiece sampling adapters.</li> </ul> <p>3. Follow the test instrument manufacturer's instructions for test preparation, including particle, zero, and system checks. Make sure the instrument's pass <b>OR</b> fail criterion is programmed to the following <b>MINIMUM</b> performance levels:</p> <ul style="list-style-type: none"> <li>• For half-facepiece respirators, an overall minimum fit factor of 100 as a passing level</li> <li>• For full-facepiece respirators, an overall minimum fit factor of 500 as a passing level</li> </ul> <p>4. Have high-efficiency particulate air (HEPA) filters, <b>OR</b> other respirator filters available that are capable of preventing significant penetration by particles generated by the test instrument such as, P100 or N95 series filters.</p> <ul style="list-style-type: none"> <li>• If you will use a sampling adapter instead of probed respirators be sure to have the correct type for the respirators chosen.</li> </ul>
<b>Test</b>
<p>5. Properly attach the sampling line to the facepiece probe or sampling adapter.</p> <p>6. Have the employee attach respirator filters, put on, properly adjust, and wear the respirator five minutes <b>BEFORE</b> the fit test. During this time you and the employee must evaluate the respirator's general fit by checking:</p> <ul style="list-style-type: none"> <li>• Proper chin placement</li> <li>• Properly tightened straps (do <b>NOT</b> over tighten)</li> <li>• Acceptable fit across the nose bridge</li> <li>• Respirator size. It must span the distance from nose to chin</li> <li>• To see if the respirator stays in position.</li> </ul> <p><b>Note:</b> Wearing the respirator for five minutes permits the employee to make certain the respirator is comfortable <b>AND</b> allows for purging of ambient particles trapped inside the facepiece.</p> <p>7. Have the employee perform a seal check. Make sure the sampling line is crimped to avoid leakage during the seal check. If <b>NO</b> leakage is detected, proceed to Step 8. If leakage is detected:</p> <ul style="list-style-type: none"> <li>• Determine the cause</li> </ul>

<b>Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure</b>
<p><b>AND</b></p> <ul style="list-style-type: none"> <li>• If leakage is due to a poorly fitting facepiece, have the employee:                             <ul style="list-style-type: none"> <li>– Choose another respirator size or model</li> </ul> </li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>– Start again at Step 6.</li> </ul> <p>8. Start the fit test cycle.</p> <ul style="list-style-type: none"> <li>• Follow the manufacturer's instructions for operating the test instrument</li> <li>• Have the employee perform the appropriate fit-test exercises in Table 19                             <ul style="list-style-type: none"> <li>– The test instrument will automatically stop and calculate the overall fit factor. Use this result to determine whether or not the test is passed                                     <ul style="list-style-type: none"> <li>■ The test has been <b>PASSED</b> if the overall fit factor is at least 100 for a half facepiece, <b>OR</b> 500 for a full facepiece</li> <li>■ The test has <b>FAILED</b> if the overall fit factor is below 100 for a half facepiece or 500 for a full facepiece.</li> </ul> </li> </ul> </li> </ul> <p><b>Note:</b> If the test has failed, have the employee select another respirator model or size following Table 11 <b>AND</b> repeat this procedure.</p>

**Table 17**

<b>Controlled Negative Pressure (CNP) Test Procedure</b>
<p><b>Important!</b></p> <ul style="list-style-type: none"> <li>• This is a quantitative fit-test (QNFT) procedure</li> <li>• This method determines respirator fit by measuring how much the facepiece leaks when it is subject to a slight negative pressure <b>AFTER</b> various premeasurement activities</li> <li>• Instruments used must have a nonadjustable test pressure of 15.0 mm water pressure</li> <li>• Measurements occur while employees remain still <b>AND</b> hold their breath for 10 seconds</li> <li>• No test aerosols are used. Respirator cartridges are not needed for this test. Sampling manifolds that replace the filter cartridges are available from the instrument manufacturer, and allow fit testing of an employee's own respirator.</li> </ul>
<b>Test Preparations</b>
<p>1. Make sure the individual conducting the fit test is thoroughly trained to perform this test.</p> <p>2. Obtain a CNP test instrument such as a FitTester 3000™. Make sure:</p> <ul style="list-style-type: none"> <li>• Defaults are set at:</li> </ul>

<b>Controlled Negative Pressure (CNP) Test Procedure</b>
<ul style="list-style-type: none"> <li>- -15mm (-0.58 inches) of water test pressure</li> <li><b>AND</b></li> <li>- A modeled inspiratory flow rate of 53.8 liters per minute</li> </ul> <ul style="list-style-type: none"> <li>• It has an effective audio warning device <u>or visual screen tracing</u> that signals when employees fail to hold their breath.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• You are not required to obtain test recording and printing equipment such as computers OR printers. Hand recording results is acceptable</li> <li>• To see default settings, check the instrument's "REDON protocol."</li> </ul> <p>3. Obtain facepiece adapters appropriate for each test respirator.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Adapters are either a one-piece (for SCBA facepieces), OR two-piece (for dual cartridge facepieces) device providing a manifold and breathing valve system. For positive pressure respirators, you will need to obtain an additional fitting, available from the respirator manufacturer, to convert the facepiece to negative pressure</li> <li>• To obtain adapters, contact the CNP instrument's distributor, Occupational Health Dynamics, <b>OR</b> the respirator manufacturer.</li> </ul>
<b>Test</b>
<p><b>Important!</b></p> <ul style="list-style-type: none"> <li>• The respirator must not be adjusted once the fit-test exercises begin. Any adjustment voids the test and the test must be repeated.</li> </ul> <p><del>((After the test, you must ask the employee about the comfort of the respirator AND if the respirator has become unacceptable, another size or model must be chosen and tested.))</del></p> <p>4. Explain the test procedure to the employee.</p> <p>5. Train the employee on how to hold a breath for at least 10 seconds.</p> <p>6. Prepare the respirator for the fit test as follows:</p> <ul style="list-style-type: none"> <li>• Remove or prop open the inhalation valves. If a breathing tube is present, disconnect it</li> <li>• Replace cartridges, if present, with the manifold and breathing valve adapter             <ul style="list-style-type: none"> <li>- For positive pressure facepieces, mount the manufacturer's additional fitting followed by the manifold-breathing valve adapter</li> </ul> </li> <li>• Connect the respirator to the CNP device according to the CNP instrument manufacturer's directions.</li> </ul> <p>7. Have the employee put on, adjust, and seal check the respirator without assistance.</p>

<b>Controlled Negative Pressure (CNP) Test Procedure</b>
<p>8. Turn on the instrument <b>AND</b> have the employee stand and perform the fit-test exercises in Table 19. <u>Once exercises begin, any adjustments will void the test and you must begin again.</u></p> <p>9. Once test exercises are completed, ask the employee about facepiece comfort. If the employee states the respirator is unacceptable, repeat the fit test using another <u>size or model.</u></p> <p>10. Determine the overall fit factor for each employee by calculating the harmonic mean of the fit-testing <u>exercises</u> as follows:</p> $\text{Overall fit factor} = \frac{n}{\frac{1}{\text{ffE1}} + \frac{1}{\text{ffE2}} + \frac{1}{\text{ffE3}} + \dots + \frac{1}{\text{ffEn}}}$ <p><u>Where:</u></p> <p><u>n = The number of exercises;</u></p> <p><u>ffE1 = The fit factor for the first exercise;</u></p> <p><u>ffE2 = The fit factor for the second exercise;</u></p> <p><u>ffE3 = The fit factor for the third exercise; and</u></p> <p><u>ffEn = The fit factor for the nth exercise.</u></p> <ul style="list-style-type: none"> <li>• The test is <b>PASSED IF</b> the overall fit factor obtained is at least 100 for a half facepiece, or at least 500 for a full facepiece</li> <li>• The test has <b>FAILED IF</b> the fit factor is less than 100 for a half facepiece; 500 for a full facepiece             <ul style="list-style-type: none"> <li>- If the test has <b>FAILED</b> you must have the employee select another respirator model or size following the steps in Table 11 <b>AND</b> repeat this procedure, starting at Step 6.</li> </ul> </li> </ul>

Table 18

<b>Generated Aerosol Test Procedure</b>	
<b>Important:</b>	<ul style="list-style-type: none"> <li>• This is a quantitative (QNFT) fit-test procedure</li> <li>• In this method, a test aerosol is used to challenge the facepiece seal while aerosol concentrations inside and outside the facepiece are measured during test exercises</li> <li>• Special equipment is needed to generate, disperse, detect, and measure test aerosols.</li> </ul>
<b>Test Preparations</b>	
1. Test aerosol.	<ul style="list-style-type: none"> <li>• Use a particulate, for example, corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride.</li> </ul>
2. Instrumentation.	<ul style="list-style-type: none"> <li>• Do <b>ALL</b> the following: <ul style="list-style-type: none"> <li>– Obtain and use aerosol generation, dilution, and measurement systems appropriate for particulates</li> <li>– Use an aerosol-generating instrument that will maintain test concentrations within a 10% variation</li> <li>– Select a sampling instrument that allows for a computer record or strip chart record to be created <ul style="list-style-type: none"> <li>■ The record must show the rise and fall of test agent concentration during each inhalation and exhalation at fit factors of at least 2000.</li> </ul> </li> </ul> </li> <li><b>Note:</b> Integrators, or computers that integrate the amount of test agent penetration leakage into the respirator for each exercise, may be used if a record of the readings is made.</li> <li>– Minimize the time interval between the activity and the recording of the activity so you can clearly connect what you see to what is being recorded. For example, use a small diameter and length of sampling line.</li> </ul>
3. Test enclosure.	<ul style="list-style-type: none"> <li>• Do <b>ALL</b> the following: <ul style="list-style-type: none"> <li>– Make sure the enclosure is equipped and constructed to effectively: <ul style="list-style-type: none"> <li>■ Maintain a uniform concentration of the test agent inside the enclosure. For example, the enclosure must be large enough to allow <b>ALL</b> employees freedom of movement during testing <b>WITHOUT</b> disturbing the test concentration or measurement instrument</li> <li>■ Keep the test agent from contaminating the air outside the enclosure. For example, use a HEPA filter to purify exhausted air</li> <li>■ Allow the individual conducting the fit test to view the employee during the test</li> </ul> </li> <li>– Make sure the tubing used to collect samples from the enclosure <b>AND</b> respirator is the same material, diameter, <b>AND</b> length. This makes the effect of aerosol loss caused by deposition in each sample line equal</li> <li>– If sodium chloride is used, relative humidity inside the enclosure must be kept below 50%.</li> </ul> </li> </ul>
4. Prepare test respirators.	<ul style="list-style-type: none"> <li>• Do <b>ALL</b> the following: <ul style="list-style-type: none"> <li>– Inspect test respirators regularly for missing parts <b>AND</b> damage</li> <li>– Keep test respirators in proper working order</li> <li>– Make sure in-mask sampling probes are: <ul style="list-style-type: none"> <li>■ Designed and installed so the air sample will be drawn from the employee's breathing zone; midway between the nose and mouth</li> </ul> </li> <li><b>AND</b></li> <li>■ The probe extends inside the facepiece at least 1/4 inch</li> <li>– Make sure sampling ports such as probes, or adapters on respirators are constructed and installed so they do <b>NOT</b>: <ul style="list-style-type: none"> <li>■ Block air flow into the sampling line</li> <li>■ Leak</li> <li>■ Interfere with the respirator's fit or performance</li> </ul> </li> </ul> </li> <li>• Have high efficiency particulate air (HEPA) filters <b>OR</b> P100 series filter available</li> </ul>



### Generated Aerosol Test Procedure

– Replace filters when increased breathing resistance is detected **OR** when the test agent has altered the filter material's integrity.

#### Test

**Important!**

- Throughout the test, maintain the employee's exposure to any test agent below the established exposure limit. Exposures allowed must be based on exposure time and exposure limit duration
- If a single peak penetration exceeds 5% for half facepieces **OR** 1% for full facepieces:
  - **STOP** the test

**AND**

- Have the employee select another respirator for testing.

5. Have the employee attach filters, put on, adjust, and seal check the respirator.

- Be sure to crimp the sampling line to avoid pressure leaks during the seal check

**AND**

- Have the employee adjust the respirator straps, without assistance, so the fit is comfortable. Do **NOT** over tighten.

6. **OPTIONAL Step.** To save time conduct a screening test to quickly identify poorly fitting respirators.

**Note:**

You may use a qualitative screening test **OR** an ambient aerosol condensation nuclei counter instrument in the count mode.

7. Make sure test aerosol concentration is reasonably stable.

- If a canopy or shower curtain enclosure is used, determine stability of the test aerosol concentration **AFTER** the employee enters the enclosure.

8. Have the employee enter the test enclosure and connect the respirator to the sample lines.

9. Immediately after entering the enclosure measure test aerosol concentration inside the respirator.

- Make sure the peak penetration does **NOT** exceed 5% for half facepieces, **OR** 1% for full facepieces.

10. Have employee perform the appropriate fit-test exercises in Table 19.

- Do **NOT** adjust the respirator once exercises begin.

11. Calculate the overall fit factor as specified in Steps 12-13. The fit test is:

- **PASSED IF** the minimum fit factor of 100 for half facepieces **OR** 500 for full facepieces is obtained

**OR**

- If a passing fit factor is **NOT** obtained, the test has **FAILED** and you must have the employee select and test another respirator.

#### Calculations

**Important!**

- Do **NOT** count the grimace exercise measurements during these calculations
- Take into account the limitations of instrument detection when determining fit factors.

12. Calculate individual fit factors for **EACH** exercise by applying the following:

Exercise fit factor (ffE) =  $\frac{\text{Average test enclosure concentration}}{\text{Test aerosol concentration inside the respirator}}$

Test aerosol concentration inside the respirator

- To determine the average test enclosure concentration use one of the following methods:
  - Arithmetic average of the concentration before and after each **test** (an average of two values per entire test)
  - Arithmetic average of concentration before and after each **exercise** (an average of two values per exercise)
  - True average measured continuously during the respirator sample
- Determine the test aerosol concentration inside the respirator in one of the following ways:
  - Average peak penetration values. Determine aerosol penetration for each exercise by:
    - Using integrators or computers that calculate the actual test agent penetration
  - OR**
  - Average the peak heights shown on the strip chart recording, graph, or by computer integration

<b>Generated Aerosol Test Procedure</b>	
<ul style="list-style-type: none"> <li>– Maximum peak penetration. Use strip chart recordings to determine the highest peak penetration for each exercise and use this value</li> <li>– Area under the peaks. Use computerized integration or other appropriate calculations to integrate the area under individual peaks for each exercise.</li> </ul>	
<p>13. Using individual exercise fit factors (ffE) calculate the <b>overall fit factor</b> by doing <b>ALL</b> of the following:</p> <ul style="list-style-type: none"> <li>• Convert each exercise fit factor to a penetration value</li> <li>• Determine the average penetration value</li> <li>• Convert the average penetration value back to a fit factor</li> </ul> <p><b>OR</b></p> <p>Use this equation to calculate the <b>overall fit factor</b>:</p>	
<p>Overall fit factor =</p>	$\frac{n}{1/ffE1 + 1/ffE2 + 1/ffE3 \dots + 1/ffEn}$
<p><u>Where:</u></p> <p><u>n = The number of exercises;</u></p> <p><u>ffE1 = The fit factor for the first exercise;</u></p> <p><u>ffE2 = The fit factor for the second exercise;</u></p> <p><u>ffE3 = The fit factor for the third exercise; and</u></p> <p><u>ffEn = The fit factor for the nth exercise.</u></p>	

**Table 19**

<b>Fit-Test Exercises</b>			
<p><b>Important:</b></p> <ul style="list-style-type: none"> <li>• This list applies when you use any fit test</li> <li>• Employees tested must perform <b>ALL</b> exercises marked with an "X" as described for the fit-test procedure used                             <ul style="list-style-type: none"> <li>– Once exercises begin, any adjustments made void the test <b>AND</b> you must begin again</li> <li>– After test exercises are completed, you must ask the employee about the comfort of the respirator. If it has become unacceptable, have the employee choose another one for testing</li> </ul> </li> <li>• When the controlled negative pressure procedure is used, <b>STOP and repeat</b> the test if the employee adjusts the respirator <b>OR</b> takes a breath and fails to hold it for 10 seconds</li> <li>• Controlled negative pressure tests conducted according to the method published in 29 CFR 1910.134, Appendix A are an acceptable alternative to the method outlined below.</li> </ul>			
Description of Required Fit-Test Exercises	<b>Fit-Test Procedures</b>		
	Qualitative Procedures	Quantitative Procedures; <b>EXCEPT the CNPP</b>	Controlled Negative Pressure Procedure (CNPP)
<ul style="list-style-type: none"> <li>• Normal breathing                             <ul style="list-style-type: none"> <li>– Breathe normally, while standing for one minute</li> </ul> </li> </ul>	X	X	
<ul style="list-style-type: none"> <li>• Deep breathing                             <ul style="list-style-type: none"> <li>– Breathe slowly and deeply while standing for one minute</li> <li>– Take caution to avoid hyperventilating</li> </ul> </li> </ul>	X	X	
<ul style="list-style-type: none"> <li>• Head side to side                             <ul style="list-style-type: none"> <li>– Slowly turn head from side to side while standing for one minute, pausing at each extreme position to inhale</li> </ul> </li> </ul>	X	X	

<b>Fit-Test Exercises</b>			
– Be careful to <b>NOT</b> bump the respirator			
<ul style="list-style-type: none"> <li>• Head up and down               <ul style="list-style-type: none"> <li>– Slowly move head up and down while standing for one minute, inhaling in the up position</li> <li>– Be careful to <b>NOT</b> bump the respirator</li> </ul> </li> </ul>	X	X	
<ul style="list-style-type: none"> <li>• Talking               <ul style="list-style-type: none"> <li>– Talk slowly and loud enough to be heard clearly by the individual conducting fit testing for one minute. Choose <b>ONE</b> of the following:                   <ul style="list-style-type: none"> <li>■ Read from a prepared text such as the Rainbow Passage<sup>1</sup></li> <li>■ Count backward from 100</li> <li>■ Recite a memorized poem or song.</li> </ul> </li> </ul> </li> </ul>	X	X	
<ul style="list-style-type: none"> <li>• Grimace               <ul style="list-style-type: none"> <li>– Smile or frown for fifteen seconds.</li> </ul> </li> </ul>		X	
<ul style="list-style-type: none"> <li>• Bending over               <ul style="list-style-type: none"> <li>– Bend over to touch toes while standing. Repeat at a comfortable pace for one minute</li> <li><b>OR</b></li> <li>– Jog in place for one minute if the test enclosure, such as a hood, does not permit bending over</li> </ul> </li> </ul>	X	X	
<ul style="list-style-type: none"> <li>• Normal breathing               <ul style="list-style-type: none"> <li>– Breathe normally while standing for one minute</li> </ul> </li> </ul>	X	X	
<ul style="list-style-type: none"> <li>• Face forward               <ul style="list-style-type: none"> <li>– <b>Premeasurement activity:</b> Stand and breath normally, without talking, for 30 seconds</li> <li>– <b>Measurement position:</b> Face forward while holding breath for 10 seconds</li> </ul> </li> </ul>			X
<ul style="list-style-type: none"> <li>• Bending over               <ul style="list-style-type: none"> <li>– <b>Premeasurement activity:</b> While standing, bend at the waist, as if to touch toes</li> <li>– <b>Measurement position:</b> Hold the bending position with face parallel to the floor while holding breath for 10 seconds</li> </ul> </li> </ul>			X
<ul style="list-style-type: none"> <li>• Head shaking               <ul style="list-style-type: none"> <li>– <b>Premeasurement activity:</b> Vigorously shake head from side to side for about 3 seconds while shouting</li> <li>– <b>Measurement position:</b> Face forward, while holding breath for 10 seconds</li> </ul> </li> </ul>			X
<ul style="list-style-type: none"> <li>• Redon-1               <ul style="list-style-type: none"> <li>– <b>Premeasurement activity:</b> Loosen all facepiece straps and remove the respirator completely, then put it back on</li> <li>– <b>Measurement position:</b> Face forward while holding breath for 10 seconds</li> </ul> </li> </ul>			X
<ul style="list-style-type: none"> <li>• Redon-2               <ul style="list-style-type: none"> <li>– Repeat the premeasurement activity and measurement position described in Redon-1</li> </ul> </li> </ul>			X

The Rainbow Passage:

"When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow."

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

**WAC 296-842-22020 Follow procedures established for seal checking respirators. Make sure employees perform a user seal check as outlined in Table 21 each time the respirator is worn, to make sure the seal is adequate.**

**IMPORTANT:**

- User seal checks are **NOT** a substitute for fit tests. See WAC 296-842-22010 for fit test procedures.

- You may use a seal check procedure recommended by the respirator manufacturer **INSTEAD** of the procedure outlined in Table 21 if you can demonstrate the procedure is based on a scientific study that, for example, demonstrates the procedure effectively identifies respirators that fit poorly when put on or adjusted.

((Make sure employees perform a user seal check as outlined in Table 21, EACH TIME the respirator is worn, to make sure the seal is adequate.))

**Table 21**

<b>User Seal Check Procedure</b>
<p><b>Important information for employees:</b></p> <ul style="list-style-type: none"> <li>• You need to conduct a seal check <b>each time</b> you put your respirator on <b>BEFORE</b> you enter the respirator use area. The purpose of a seal check is to make sure your respirator (which has been previously fit tested by your employer) is properly positioned on your face to prevent leakage during use and to detect functional problems</li> <li>• The procedure below has two parts; a positive pressure check and a negative pressure check. <b>You must complete both parts each time.</b> It should only take a few seconds to perform, once you learn it</li> <li>◆ If you cannot pass both parts, your respirator is <b>NOT</b> functioning properly, see your supervisor for further instruction.</li> </ul>
<p><b>Positive pressure check:</b></p> <ol style="list-style-type: none"> <li>1. Remove exhalation valve cover, if removable.</li> <li>2. Cover the exhalation valve completely with the palm of your hand <b>WHILE</b> exhaling gently to inflate the facepiece slightly.</li> </ol>

<b>User Seal Check Procedure</b>
<ol style="list-style-type: none"> <li>3. The respirator facepiece should remain inflated (indicating a build-up of positive pressure and <b>NO</b> outward leakage).                     <ul style="list-style-type: none"> <li>• If you detect <b>NO</b> leakage, replace the exhalation valve cover (if removed), and proceed to conduct the negative pressure check</li> <li>• If you detect evidence of leakage, reposition the respirator (after removing and inspecting it), and try the positive pressure check again.</li> </ul> </li> </ol>
<p><b>Negative pressure check:</b></p> <ol style="list-style-type: none"> <li>4. Completely cover the inhalation opening(s) on the cartridges or canister with the palm(s) of your hands <b>WHILE</b> inhaling gently to collapse the facepiece slightly.                     <ul style="list-style-type: none"> <li>• If you cannot use the palm(s) of your hands to effectively cover the inhalation openings on cartridges or canisters, you may use:                             <ul style="list-style-type: none"> <li>– Filter seal(s) (if available)</li> </ul> </li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>– Thin rubber gloves.</li> </ul> </li> <li>5. Once the facepiece is collapsed, hold your breath for 10 seconds <b>WHILE</b> keeping the inhalation openings covered.</li> <li>6. The facepiece should remain slightly collapsed (indicating negative pressure and <b>NO</b> inward leakage).                     <ul style="list-style-type: none"> <li>• If you detect <b>NO</b> evidence of leakage, the tightness of the facepiece is considered adequate, the procedure is completed, and you may now use the respirator</li> <li>• If you detect leakage, reposition the respirator (after removing and inspecting it) and repeat <b>BOTH</b> the positive and negative fit checks.</li> </ul> </li> </ol>

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |  |
|-----------------|--|
| WAC 296-842-110 | Voluntary respirator use requirements. |
| WAC 296-842-300 | Definitions.                           |

**WSR 09-19-129**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed September 22, 2009, 12:52 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: The purpose of the rule change is to eliminate the forty-five day processing timeframe for general assistance applications filed by a person in confinement in a correctional facility or institution.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, and 388-406-0045.

Statutory Authority for Adoption: RCW 74.08.060, 74.04.050, 74.04.057, and 74.08.090.

Other Authority: Chapter 198, Laws of 2009 (SSB 6024).

Adopted under notice filed as WSR 09-15-159 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 3, 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 3, Repealed 0.

Date Adopted: September 14, 2009.

Stephanie E. Vaughn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-09-042, filed 4/10/08, effective 5/11/08)

**WAC 388-406-0005 Can I apply for cash, medical, or Basic Food?** (1) You can apply for any benefit the department offers, including cash assistance, medical assistance, or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child;

(ii) An incapacitated person; or

(iii) Someone who is deceased.

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) If you get Supplemental Security Income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.

(5) A person or agency may apply for GAU or medical assistance for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

(6) When you are confined or incarcerated in a Washington state public institution, you may apply for cash or medical assistance (~~((within forty five days prior to your expected release date))~~) if you meet the following criteria:

(a) You are confined by or in the following public institutions:

(i) Department of corrections;

(ii) City or county jail; or

(iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

(7) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:

(a) Meet the criteria of subsection (6) in this section; and

(b) Were receiving medicaid or general assistance benefits immediately before confinement or within the five years prior to confinement.

(8) If you meet the criteria in subsection (6) but did not receive medicaid or general assistance benefits within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.

(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.

AMENDATORY SECTION (Amending WSR 03-22-039, filed 10/28/03, effective 12/1/03)

**WAC 388-406-0035 How long does the department have to process my application?** (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your ~~((application))~~ eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

(a) If you are pregnant, we must process your application for medical within fifteen working days;

(b) If you are applying for general assistance (GA-U), alcohol or drug addiction treatment (ADATSA), or medical assistance, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045; and

(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days.

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for Supplemental Security Income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

**AMENDATORY SECTION** (Amending WSR 02-14-023, filed 6/21/02, effective 7/1/02)

**WAC 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed?** If your application for cash or medical assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

(3) For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.

(4) For general assistance (GA), good cause exists if you apply when you are confined in a Washington State public institution as defined in WAC 388-406-0005 (6)(a)

## WSR 09-19-135

### PERMANENT RULES

#### SKAGIT VALLEY COLLEGE

[Filed September 22, 2009, 3:33 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: To clarify disciplinary and grievance procedures; to update language in guidelines and sanctions.

Citation of Existing Rules Affected by this Order: Amending WAC 132D-120-020, 132D-120-030, 132D-120-

040, 132D-120-050, 132D-120-070, 132D-120-080, 132D-120-090, 132D-120-100, 132D-120-110, 132D-120-120, 132D-120-230, 132D-120-240, 132D-120-250, 132D-120-260, 132D-120-270, 132D-120-280, 132D-120-290, 132D-120-300, 132D-120-310, 132D-120-320, and 132D-120-350.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 09-16-126 on August 5, 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 21, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, 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 21, Repealed 0.

Date Adopted: September 9, 2009.

Lisa Radeleff  
Executive Assistant

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-020 Definitions.** As used in this chapter, the following words and phrases shall be defined as follows:

(1) "Academic dishonesty" means cheating, plagiarism, fabrication, lying, bribery, threat, aid of academic dishonesty, and other dishonesty (~~relating to academic work~~) in relation to academic work both in onground and on-line courses.

(a) Plagiarism: Presenting as one's own, intentionally or not, someone else's words, ideas, conclusions, images, or data, without specific acknowledgment. This includes, but is not limited to, presenting the source's language without quotation marks (with or without citation); paraphrased language that is not cited; and/or language that is cited, but insufficiently paraphrased.

(b) Cheating:

(i) Using unauthorized assistance, notes or study aids in completing assignments, taking quizzes, tests, or exams;

(ii) Allowing another party to do one's work/exam and turning in the work/exam as one's own;

(iii) Submitting the same or similar work in more than one course or while repeating the same course without permission from the course instructors;

(iv) The acquisition, without permission, of a test or other academic material belonging to the college.

(c) Fabrication: Falsification or creation of data, research, or resources, or altering a graded work without the prior consent of the course instructor.

(d) Lying: Deliberate falsification in written or verbal form.

(e) Bribery: Providing, offering, or taking rewards in exchange for a grade, an assignment, or the aid of academic dishonesty.

(f) Threat: An attempt to intimidate a student, staff, or faculty member for the purpose of receiving an unearned grade or in an effort to prevent the reporting of a conduct violation.

(g) Abetting academic dishonesty: Intentionally facilitating any of the above behaviors.

(2) "Alcoholic beverages" are beer, wine and hard liquor as defined in RCW 66.04.010(15) as now law or hereafter amended.

~~((The term "cheating" includes, but is not limited to:~~

~~(a) Use of any unauthorized assistance in taking quizzes, tests or examinations;~~

~~(b) Dependence upon the aid of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments; or~~

~~(c) The acquisition, without permission, of a test or other academic material belonging to a member of the college faculty or staff.~~

(4)) "College" means Skagit Valley College, and any other community college centers or facilities established within Community College District No. 4.

~~((5))~~ (4) The term "college official" includes any person employed by the college or any member of the college board of trustees, performing administrative or professional responsibilities.

~~((6))~~ (5) The term "college premises" includes all land, buildings, facilities and other property in the possession of, or owned, used or controlled by the college (including adjacent streets and sidewalks).

~~((7))~~ (6) "Controlled substance" includes any illegal drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

~~((8))~~ (7) "Demonstrations" shall mean any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or group of persons.

~~((9))~~ (8) The ~~((director))~~ dean of students ~~((life))~~ is that person designated by the college president to be responsible for the administration of the code of conduct.

~~((10))~~ (9) "Faculty" includes any full-time or part-time academic employee of the district whose assignment is one of a combination of instruction, counseling or library services.

~~((11))~~ (10) A ~~((judicial advisor))~~ student conduct administrator is a college official authorized on a case-by-case basis to impose sanctions upon students found to have violated this code of conduct. The ~~((director))~~ dean of students ~~((life))~~ will serve as the ~~((judicial advisor))~~ student conduct administrator or may appoint another ~~((trained))~~ college official to perform that function if he/she perceives that it would be in the best interest of any of the parties involved in a case. A ~~((judicial advisor))~~ student conduct administrator may serve as the sole member, or one of the members, of a judicial body. Nothing shall prevent the ~~((director))~~ dean of students ~~((life))~~ from authorizing the same ~~((judicial advi-~~

~~sor))~~ student conduct administrator to impose sanctions in all cases.

~~((12))~~ (11) The term ~~((judicial body))~~ student conduct board means any person or persons authorized to determine whether a student has violated the code of conduct and to recommend imposition of sanctions. ~~((Judicial bodies))~~ Student conduct boards will be selected annually through the college's authorized committee selection process.

~~((13))~~ (12) The term "may" is used in the permissive sense.

~~((14))~~ (13) The term "member of the college community" includes any person who is a student, faculty member, college official, or any other person employed by the college. A person's status in a particular situation shall be determined by a ~~((judicial advisor))~~ student conduct administrator.

~~((15))~~ (14) The term "organization" means any number of persons who have complied with the formal requirements for college recognition.

~~((16))~~ The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person, without full and clear acknowledgment. It also includes the unacknowledged use of materials such as term papers or other academic material prepared by a person other than the submitting student.

(17)) (15) The term "respondent" means any student accused of violating this code of conduct.

~~((18))~~ (16) The term "sexual harassment" includes, but is not limited to, unwanted sexual advances; requests for sexual favors; and other verbal and physical conduct which interferes with learning, or creates a hostile or offensive environment for one of the parties.

~~((19))~~ (17) The term "shall" is used in the imperative sense.

~~((20))~~ (18) "Student," unless otherwise qualified, shall mean and include any person who is registered for classes at the college. Persons who are not officially enrolled for a particular term, but who have a continuing relationship with the college, are considered "students."

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-030 Jurisdiction of the college.** (1) Scope. This code shall apply to every student whenever the student is present upon or in any college premises and whenever the student is present at or engaged in any college-sponsored activity held on or in noncollege facilities.

(2) Remedies not exclusive. The remedies provided for in this code are not exclusive. Seeking or obtaining any remedies under this code is not intended to bar the college, the complainant, or any other person or entity from seeking or obtaining such other remedies as may be available under other college policies, or in any other forum under applicable civil or criminal law.

(3) Trespass. The ~~((director))~~ dean of students ~~((life))~~ or his or her designee(s) shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain in any college property or facility. Such power and authority may be exercised to halt an event which is deemed to be unreason-

ably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any individual who disobeys a lawful order given by the ~~((director))~~ dean of students ~~((life))~~, or his or her designee(s), shall be subject to disciplinary action and/or charges of criminal trespass.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-040 Disciplinary authority.** (1) ~~((Judicial bodies))~~ Student conduct boards shall be selected annually via the standing committee selection process and approved by the college president. The ~~((director))~~ dean of students ~~((life))~~ shall determine which ~~((judicial body))~~ conduct board or ~~((judicial advisor))~~ student conduct administrator shall be authorized to hear each case.

(2) The ~~((director))~~ dean of students ~~((life))~~ may develop policies and procedures for the administration of the ~~((judicial program))~~ student conduct program and for the conduct of hearings which are consistent with the provisions of the Skagit Valley College code of student conduct. Each complainant and respondent shall be given a copy of any written procedural rules prior to any ~~((judicial))~~ student conduct hearing.

(3) Decisions made by a ~~((judicial body))~~ student conduct board and/or ~~((judicial advisor))~~ student conduct administrator shall be final, pending the appeal process provided within this code.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-050 Violations.** Any student found to have committed, or aided or abetted others to commit, any of the following violations is subject to the disciplinary sanctions outlined in this chapter:

(1) Assault, reckless endangerment, physical abuse, harassment, coercion and/or other conduct which threatens or endangers the health or safety of any person.

(2) Disorderly, lewd, indecent or other behavior which breaches the peace, interferes with the rights of others or which obstructs or disrupts teaching, research, administrative functions or other college-authorized activities.

(3) Failure to comply with orders or directions of college officials or law enforcement officers acting in performance of their duties, and/or failure to identify oneself to these persons when requested to do so.

(4) Participation in a campus demonstration or other activity which disrupts the normal operations of the college and infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus or at college-sponsored activities.

(5) Acts of dishonesty ~~((including, but not limited to))~~ in on-ground and on-line courses including, but not limited to, the following:

(a) Cheating, plagiarism, ~~((or other forms of academic dishonesty))~~ fabrication, lying, bribery, threat, aid of academic dishonesty, and other dishonesty relating to academic work.

(b) Furnishing false information to any college official, faculty member or office.

(c) Forgery, alteration or misuse of any college document, record or instrument of identification.

(d) Tampering with the election of any college-recognized student organization.

(6) Attempted or actual theft of, and/or damage to, property of the college or property of a member of the college community or other personal or public property.

(7) Failure to follow the reasonable instructions of faculty members, thereby infringing upon the rights and privileges of other members of the college community.

(8) Possession or unauthorized use of college equipment and supplies including, but not limited to, converting college equipment or supplies for personal gain or use without proper authority.

(9) Abuse of the ~~((judicial))~~ student conduct system including, but not limited to:

(a) Failure to obey the summons of a ~~((judicial body))~~ student conduct board or college official.

(b) Falsification, distortion, or misrepresentation of information before a ~~((judicial body))~~ student conduct board.

(c) Disruption of, or interference with, the orderly conduct of a ~~((judicial))~~ student conduct proceeding.

(d) Knowingly initiating a ~~((judicial))~~ student conduct proceeding without cause (i.e., filing a false report).

(e) Attempting to discourage an individual's proper participation in, or use of, the ~~((judicial))~~ student conduct system.

(f) Attempting to ~~((improperly))~~ influence improperly the impartiality of a member of a ~~((judicial body))~~ student conduct board prior to, and/or during, the course of a ~~((judicial))~~ student conduct proceeding.

(g) Harassment (verbal or physical) and/or intimidation of a member of a ~~((judicial body))~~ student conduct board prior to, during, or after the course of a ~~((judicial))~~ student conduct proceeding.

(h) Failure to comply with the sanction(s) imposed under the code of conduct.

(i) Influencing or attempting to influence another person to abuse the ~~((judicial))~~ student conduct system.

(10) Falsely setting off, or otherwise tampering with, any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(11) Unlawful discrimination based on, but not limited to, race, ethnicity, national origin, ancestry, creed, color, gender (including sexual harassment), marital/parental status, sexual orientation, age, religion, and sensory, mental, or physical disability.

(12) Refusal to provide positive identification (e.g., valid driver's license or state identification card) in appropriate circumstances to any college employee in the lawful discharge of that employee's duties.

(13) Entering any administrative or other employee office or any locked or otherwise closed college facility in



any manner, at any time, without authority or permission of the college employee or agent in charge thereof.

(14) Smoking in college vehicles or on college premises outside of designated smoking areas.

(15) Use, possession, distribution or being demonstrably under the influence of narcotics or other controlled substances, except as expressly permitted by law.

(16) Use, possession, distribution or being under the influence of alcoholic beverages, except as expressly permitted by law and college regulations.

(17) Possession of firearms, explosives, other weapons, or dangerous chemicals on college premises or at college-sponsored or supervised activities, unless approved by the president of the college or his/her designee.

(18) Theft or other abuse of computer time including, but not limited to:

(a) Unauthorized entry into a file to use, read, or change contents, or for any other purpose.

(b) Unauthorized transfer of a file.

(c) Unauthorized use of another individual's identification and/or passwords.

(d) Use of computing facilities to interfere with the work of another student or college official.

(e) Use of computing facilities to send obscene or abusive messages.

(f) Use of computing facilities that interferes with normal operation of the college computing system including, but not limited to, unsolicited e-mail.

(19) Violation of other published college policies, rules or regulations.

(20) Violation of federal, state or local law on college premises or at college-sponsored or supervised activities.

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-070 Disciplinary proceedings. (1)**

**Complaints.** Any member of the college community may file a complaint against any student for misconduct. Complaints shall be submitted within ninety days after the incident. Complaints shall be prepared in writing and directed to the office of the ~~((judicial advisor))~~ student conduct administrator.

(2) **Notice to accused student.** When a complaint is filed against a student, the ~~((judicial advisor))~~ student conduct administrator will, within five school days, serve written notice on the accused student, including a copy of the code of student conduct advising the student of the charges against him or her.

(3) **Informal process.** The ~~((judicial advisor))~~ student conduct administrator may, but is not required to, conduct an investigation to determine the merit of the complaint and if it can be disposed of informally by mutual consent of the parties involved. For adverse parties who agree to settle the complaint informally, the ~~((judicial advisor))~~ student conduct administrator will facilitate communication between the complainant(s) and the student(s) accused (respondent(s)). The ~~((judicial advisor))~~ student conduct administrator will determine the best means of conducting the informal process, the purpose of which is to reach an agreement that is mutually

satisfactory to the parties, if possible. Interim sanctions may be imposed at any time during the informal process with good reason (see WAC 132D-120-090 Interim sanctions (~~(see section))~~). If it is determined that the matter cannot be resolved by mutual consent, a summary disciplinary conference will be initiated by the ~~((judicial advisor))~~ student conduct administrator.

(4) **Summary proceedings.**

(a) **Disposition.** After considering the evidence in the case and interviewing the respondent in a summary hearing (if the respondent has appeared at the scheduled conference), the ~~((judicial advisor))~~ student conduct administrator may:

(i) Terminate the proceeding exonerating the student(s);

(ii) Dismiss the case after whatever counseling and advice the ~~((judicial advisor))~~ student conduct administrator deems appropriate; or

(iii) Impose any of the sanctions listed in this code.

The decision shall be in writing and shall be served on both the respondent and the complainant.

(b) **Request for formal hearing.** After the ~~((judicial advisor's))~~ student conduct administrator's decision, the respondent and/or the complainant may request a formal hearing to challenge a decision reached, or a sanction imposed, by the ~~((judicial advisor))~~ student conduct administrator pursuant to the informal disciplinary hearing. Such requests shall be in writing and shall be delivered to the ~~((director))~~ dean of students ~~((life))~~ or designated ~~((judicial advisor))~~ student conduct administrator within five school days of the ~~((judicial advisor's))~~ student conduct administrator's decision. A time shall be set for a formal hearing not less than five, nor more than fifteen, calendar days after the request for a formal hearing. If there is good reason and the complainant(s) and the respondent(s) agree, time limits for scheduling a hearing may be extended at the discretion of the ~~((judicial advisor))~~ student conduct administrator.

(5) **Formal hearings.** Formal hearings shall be convened by the ~~((judicial advisor))~~ student conduct administrator and conducted by a judicial body according to the following guidelines:

(a) Hearings shall be conducted in private. Hearings will be chaired by the ~~((judicial advisor))~~ student conduct administrator or his/her designee.

(b) The complainant(s) and the respondent(s) shall be expected to attend the formal hearing. Admission of any person to the hearing shall be at the discretion of the ~~((judicial advisor))~~ student conduct administrator.

(c) In hearings involving more than one accused student, the ~~((judicial advisor))~~ student conduct administrator, at his or her discretion, may permit separate hearings for each respondent.

(d) The complainant and the respondent have the right to be assisted by any advisor they choose, at their own expense. The advisor may be an attorney, but advisors are not permitted to speak or participate directly in any hearing before a ~~((judicial body))~~ student conduct board, except as permitted by the ~~((judicial advisor))~~ student conduct administrator. If the student chooses to be advised by a licensed attorney in the state of Washington, he/she must notify the ~~((judicial advisor))~~ student conduct administrator at least five working days prior to the hearing.

(e) The complainant, the respondent and the ~~((judicial body))~~ student conduct administrator shall have the right of presenting witnesses and evidence, subject to the right of questioning by the ~~((judicial body))~~ student conduct board, the complainant or the respondent. The ~~((judicial advisor))~~ student conduct administrator may limit the scope and number of questions to witnesses.

(f) Pertinent records, exhibits and written statements may be accepted for consideration as evidence prior to, or during, a hearing by a ~~((judicial body))~~ student conduct board at the discretion of the ~~((judicial advisor))~~ student conduct administrator.

(g) All procedural questions are subject to the final decision of the ~~((judicial advisor))~~ student conduct administrator.

(h) After the hearing, the judicial body shall determine whether the student has violated the code of conduct as charged.

(i) The ~~((judicial body's))~~ student conduct board's determination shall be made on the basis of whether it is more likely than not that the respondent violated the code of conduct.

(j) If the ~~((judicial body))~~ student conduct board determines that a student has violated the code of conduct, the body will determine whether the sanction(s) imposed pursuant to the informal disciplinary conference were appropriate for the violation of the code of conduct which the student was found to have committed.

(k) A ~~((judicial body))~~ student conduct board may reduce or increase the sanctions imposed by the ~~((judicial advisor))~~ student conduct administrator pursuant to the informal disciplinary conference or remand the case to a ~~((judicial advisor))~~ student conduct administrator.

(6) There shall be a single verbatim record, such as a tape recording, of all hearings before a judicial body. The record shall be the property of the college and shall be preserved until the decision is final after the time for appeals has passed.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-080 Sanctions.** (1) The following sanctions may be imposed by the ~~((judicial advisor))~~ student conduct administrator upon any student, group or organization found to have violated the code of conduct:

(a) Warning—A notice in writing to the student that the student has violated this code and that further violation may result in additional disciplinary proceedings and sanctions.

(b) Probation—A written reprimand placing conditions upon the student's continued attendance. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating the code during the probationary period. Notice will be made in writing and shall specify the period of probation and the conditions, such as limiting the student's participation in extracurricular activities.

(c) Loss of privileges—Denial of specified privileges for a designated period of time.

(d) Fines—Fines may be imposed.

(e) Restitution—Compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.

(f) Discretionary sanctions—Work assignments, service to the college or other related discretionary assignments.

(g) Deactivation—(Applies to student groups or organizations). Loss of all privileges, including college recognition, for a specified period of time.

(h) College suspension—Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(i) College expulsion—Permanent separation of the student from the college. There shall be no refund of fees for the quarter in which the action is taken but fees paid in advance for a subsequent quarter will be refunded.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) Disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's confidential record. Upon graduation and application to the ~~((judicial advisor))~~ student conduct administrator, the student's confidential record may be expunged of disciplinary actions other than college suspension or expulsion consistent with the college's schedule of record disposition.

(4) In each case in which a judicial body determines that a student has violated the code of conduct, the sanction(s) shall be determined by the ~~((judicial advisor))~~ student conduct administrator. In cases in which persons other than, or in addition to, the ~~((judicial advisor))~~ student conduct administrator have been authorized to serve as the ~~((judicial body))~~ student conduct administrator, the recommendation of all members of the ~~((judicial body))~~ student conduct board shall be considered by the ~~((judicial advisor))~~ student conduct administrator in determining and imposing sanctions. The ~~((judicial advisor))~~ student conduct administrator is not limited to sanctions recommended by members of the ~~((judicial body))~~ student conduct board. Following the hearing, the ~~((judicial body))~~ student conduct board and the ~~((judicial advisor))~~ student conduct administrator shall advise the respondent in writing of its determination and any sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-090 Interim sanctions.** In certain circumstances, the ~~((director of))~~ student ~~((activities and auxiliary services, or designated judicial advisor,))~~ conduct administrator may impose any of the above sanctions pending a hearing before, or decision by, a ~~((judicial body))~~ student conduct board.

(1) Interim sanctions may be imposed only:

(a) To ensure the safety and well-being of members of the college community or the preservation of college property;

(b) To ensure the student's own physical or emotional safety and well-being; or

(c) If the student poses a threat of disruption to, or interference with, the educational process or other normal operations of the college.

(2) Notice of interim sanctions will be made in writing and will state:

(a) The charges against the student, including reference to the provisions of this code that were allegedly violated; and

(b) That the student charged has the right to an informal hearing before the ~~((judicial advisor))~~ student conduct administrator to challenge the interim sanctions.

(3) If such a hearing is requested, it shall be held as soon as practicable after the interim sanctions have been imposed. The ~~((judicial advisor))~~ student conduct administrator will decide whether there is probable cause to believe that continuation of the sanctions is necessary, and/or whether some other disciplinary action is appropriate.

(4) The ~~((judicial advisor))~~ student conduct administrator may continue to enforce the interim sanctions if, following the informal hearing, he or she finds that there is probable cause to believe that interim sanctioning of that student is necessary for the safety of the student, other students, or persons on college facilities, the educational process of the institution, or to restore order to the campus. The result of the informal hearing will be given to the student in writing.

(5) If sanctions are continued, the written notice shall stipulate the duration of the sanctions and conditions under which they may be terminated.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-100 Appeals.** (1) Following a formal hearing, a decision reached by a ~~((judicial body))~~ student conduct board, or a sanction imposed by the ~~((judicial advisor))~~ student conduct administrator, may be appealed by the respondent or complainant to the executive vice-president of instruction and student services ~~((and student success))~~ within ten school days of the date of the written decision. Such appeals shall be in writing and shall be delivered to the ~~((director))~~ dean of students ~~((life))~~ or designated ~~((judicial advisor))~~ student conduct administrator. The notice of appeal is deemed delivered on the date it is postmarked or the date it is hand-delivered to the office of the ~~((director))~~ dean.

(2) Appeals shall be limited to review of the record of the formal hearing (see disciplinary proceedings section) and supporting documents, except as required to explain the basis of new evidence, for any of the following:

(a) To determine whether the formal hearing was conducted fairly in light of the charges and evidence presented and in conformity with the prescribed procedures, giving the complaining party a reasonable opportunity to prepare and present evidence that the student code of conduct was violated, and giving the respondent a reasonable opportunity to prepare and to present a rebuttal of those allegations.

(b) To determine whether the decision reached regarding the respondent was based on substantial evidence; that is, whether the facts in the case were sufficient to establish the fact that a violation of the student code of conduct had occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation committed.

(d) To consider new evidence, sufficient to alter a decision or other relevant facts not brought out in the formal hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing.

(3) The executive vice-president of instruction and student services ~~((and student success))~~ may, upon review of the case, reduce or increase the sanctions imposed by the ~~((judicial advisor))~~ student conduct administrator or remand the case to the ~~((judicial body))~~ student conduct board and ~~((judicial advisor))~~ student conduct administrator.

(4) **Final appeal.** Following an appeal to the executive vice-president of instruction and student services ~~((and student success))~~, a decision reached by the vice-president may be appealed by the respondent or complainant to the college president within ten school days of the date of the written decision. Such appeals shall be in writing and shall be delivered to the ~~((director))~~ dean of students ~~((life))~~ or designated ~~((judicial advisor))~~ student conduct administrator. Appeals to the college president will be conducted in the same manner as those made to the executive vice-president of instruction and student services ~~((and student success))~~. The notice of appeal is deemed delivered on the date it is postmarked or the date it is hand-delivered to the office of the ~~((director))~~ dean.

(5) The college president's decision shall be final.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-110 Student rights.** The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom:

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process:

(a) The rights of students to be secure in their persons, quarters, papers and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student rights and responsibilities is entitled, upon request, to procedural due process as set forth in this chapter.

(3) Distribution and posting: Students may distribute or post printed or published material subject to official procedures printed and available in the office of student ~~((programs and activities))~~ life.

(4) Off-campus speakers: Recognized student organizations shall have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding, and compliance with the college procedures available in the office of student life.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-120 Interpretation and revision.** (1) **Code interpretation.** Any question of interpretation regarding the code of conduct shall be referred to the ~~((director))~~ dean of students ~~((life))~~ or designee for final interpretation.

(2) **Code revision.** The code of conduct shall be reviewed at least every five years under the direction of the ~~((director))~~ dean of students ~~((life))~~.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-230 Student ~~((grievances))~~ complaints.** The purpose of this section is to protect each student's freedom of expression in the classroom; to protect each student against improper disclosure of the students' views, beliefs and political associations; to protect each student from improper, arbitrary or capricious academic evaluation as evidenced by the student's course grade; and to afford each student reasonable protection against arbitrary or capricious actions taken outside the classroom by other members of the college community.

Skagit Valley College is committed to protecting the rights and dignity of each individual in the campus community. Therefore, the college will not tolerate discrimination of any kind, at any level.

Students may follow the college policy on sexual harassment and/or may file complaints with outside agencies, as referenced in WAC ~~((132D-300-040(9)))~~ 132D-305-005(10). Students should determine the time deadlines that apply to the filing of complaints with such outside agencies, as the college's internal processing of student complaints may not recognize such time periods.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-240 ~~((Grievances))~~ Complaints excluded from this section.** (1) A student may not use the provisions of this section as the basis for filing a ~~((grievance))~~ complaint based on the outcome of ~~((summary or other))~~ disciplinary proceedings described in sections of the code of student conduct.

(2) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board

of trustees of Community College District No. 4 shall not be grievable matters. College personnel actions are considered confidential. Results may not be made available for review.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-250 ~~((Grievance))~~ Initial complaint.** If a student believes he or she has been unfairly treated by an officer of the college, faculty member or a member of the college staff, the student may follow the ~~((grievance))~~ complaint procedures in the order outlined below. The student must initiate proceedings with the college within thirty working days of the occurrence that gave rise to the ~~((grievance))~~ complaint. The college may choose to take appropriate corrective action at any time based on a student report whether or not the student chooses to pursue the ~~((grievance))~~ complaint process.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-260 ~~((Grievance))~~ Complaint procedure.** (1) The ~~((grievance))~~ complaint procedures set forth in this section concern only those ~~((grievances))~~ complaints that do not involve violation of Title IX of the Education Amendments of 1972 (sex discrimination) or section 504 of the Rehabilitation Act of 1973 (disability discrimination).

(2) A student wishing to pursue a resolution to his or her concern may contact the office where counseling services are provided. That office will serve as a source of information and direction for ~~((grievants))~~ complainants.

(3) A student shall contact the faculty or staff member with whom he or she has a concern and attempt to resolve the matter through direct discussion. A student may ask a support person to accompany him or her in this discussion.

(4) If direct discussion does not resolve the concern to the student's satisfaction, the student shall take the matter to the faculty/staff member's immediate supervisor. The supervisor shall attempt to resolve the matter promptly and fairly.

(5) If the issue is not resolved, the supervisor shall forward the complaint to the appropriate administrator who shall meet with the student and, within three working days, write a letter to the student involved, copied to the faculty or staff member involved that details the resolution proposed. In appropriate cases, the student shall also be informed of his or her right to file a petition to have the complaint heard before the grievance review committee.

(6) The procedure outlined in steps one through four shall be completed in twenty working days unless all parties agree to more time.

(7) ~~((The student shall be notified of this decision and shall also be informed of his or her right to file a petition to have the grievance heard before the grievance review committee.))~~ In order to have his/her complaint heard by the grievance review committee:

(a) The student must submit this request to the office of the registrar within five days of his/her receipt of the administrator's letter ~~((Any student alleging a violation of Title IX of the 1972 Education Amendments concerning sexual~~

harassment may avail himself or herself of the college's sexual harassment policy);

(b) The student's complaint must fall into one of the following categories:

(i) Alleged deviation from course grading policies as specified in the syllabus;

(ii) Alleged errors in applying grading procedures;

(iii) Alleged lowering of grades for nonacademic reasons, including discrimination;

(iv) Alleged sex and/or disability discrimination in accordance with procedures described in WAC 132D-120-270.

Other complaints about college employees will be considered and acted upon at the discretion of the appropriate administrator and will not be heard by the grievance review committee.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-270 Grievance procedure—Sex and disability discrimination.** (1) Any student alleging a violation of Title IX of the Education Amendments of 1972 (sex discrimination) or section 504 of the Rehabilitation Act of 1973 (disability discrimination) shall, as a first step in the grievance procedure, contact the Title IX officer or disabled student services coordinator. The student may contact the office where counseling services are provided for the name and location of the Title IX officer or disabled student services coordinator. Any student alleging a violation of Title IX of the 1972 Education Amendments concerning sexual harassment by a college faculty or staff member may avail himself or herself of the college's sexual harassment complaint procedures.

(2) The Title IX officer or disabled student services coordinator shall:

(a) Provide information about informal and formal options within and outside the college.

(b) Intervene, if requested by either party, in order to resolve the problem to the satisfaction of all.

(3) If the Title IX officer or disabled student services coordinator is unable to resolve the ~~((grievance))~~ complaint, the student may request a hearing before the grievance review committee and is entitled to all appeals beyond that committee.

(4) Consultations with the Title IX officer and the disabled student services coordinator shall be strictly confidential.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-280 Grievance review committee procedures.** (1) Any ~~((grievance))~~ complaint meeting the criteria listed in WAC 132D-120-260 not resolved by an administrator or the Title IX officer or disabled student services coordinator may be appealed to the grievance review committee for a hearing. The ~~((grievant))~~ complainant or respondent shall petition the committee by obtaining an official ~~((grievance))~~ complaint form from the office where counseling services are provided. That petition shall be made

within five working days of the notice of decision in the previous proceedings.

(2) When a petition for review is filed, the student shall either:

(a) Be assigned a process advisor by the college or choose an advisor of his/her own; or

(b) Waive his or her right to an advisor; or

(c) Notify the college of his or her retention of an attorney at least one week prior to a scheduled grievance hearing. Where the student is accompanied by an attorney, the college may be represented by an assistant attorney general.

(3) The student's completed official ~~((grievance))~~ complaint form shall be distributed to all members of the grievance review committee.

(4) The registrar shall chair the grievance review committee and its members shall be chosen as follows:

(a) Two faculty members appointed by the vice-president of ~~((educational))~~ instruction and student services; and

(b) Two students appointed by the president of the associated students of Skagit Valley College; and

(c) Two classified staff members appointed by the classified staff designated leadership.

(5) The grievance review committee may call any witnesses and hear any testimony needed to reach a prompt, fair resolution of the ~~((grievance))~~ complaint. The proceedings before the committee shall not be considered a formal trial-type hearing.

(6) Within three working days of the conclusion of the hearing, the committee shall issue a written ~~((recommendation. All parties shall receive a copy of this recommendation))~~ decision to all involved in the case.

(7) If a student feels that his/her case was not handled according to the procedures set forth in this section, he/she may request that it be reviewed by the appropriate vice-president. The vice-president's review will be limited to the process used in decision making. In the case of instructional grievances, the ~~((committee's recommendations))~~ request for review shall be sent to the executive vice-president of ~~((educational))~~ instruction and student services. In all other cases, the ~~((committee's recommendations))~~ request shall be forwarded to the vice-president responsible for the area in which the faculty or staff member is employed. The appropriate vice-president shall, within five working days, ~~((accept, modify, or reject the recommendations of))~~ review the process used by administrators and the grievance review committee and notify all parties if the process is to be corrected in any way.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-290 Final decision regarding ~~((the appeal procedure))~~ process review—Extra-institutional appeals.** (1) Where the student is not satisfied by the vice-president's decision, he or she may appeal that decision to the president of the college provided that such appeal is made within five working days of the student's receipt of notice of the decision.

(2) The president will review the ~~((record of the case prepared by the))~~ process carried out by administrators and the

grievance review committee together with any appeal statement and will deliver a written acceptance of the vice-president's decision or directions as to what other course of action shall be taken, within ten instructional days after receiving the appeal.

(3) This decision shall constitute final agency action by the college.

(4) A student who feels aggrieved by the institution's final decision, may petition for judicial review of that decision according to the provisions of RCW 28B.19.150.

(5) For further review in sexual or disability discrimination cases, the grievant may send appeals or inquiries to:

(a) U.S. Department of Education  
Office for Civil Rights Region X  
915 Second Avenue, Room 3310  
Seattle, WA 98174  
206-220-7900

(b) Washington State Human Rights Commission  
Third Avenue  
Seattle, Washington 98101  
206-464-6500

(c) Department of Justice Civil Rights Division  
1424 New York Avenue, Room 5041  
Washington, D.C. 20005  
202-307-0818 (TTD), or 800-514-0383 (voice)

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

**WAC 132D-120-300 Nature of grievance proceedings.** All hearings growing out of a student-initiated (~~((grievance))~~) complaint, including appeals to the office of the president, shall remain closed unless all parties to the grievance agree on an open hearing.

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

**WAC 132D-120-310 Withdrawal of grievance.** (1) At any time during the complaint or grievance procedure, the (~~((grievant))~~) complainant may officially withdraw the grievance in writing.

(2) In the event the (~~((grievant))~~) complainant or appellant fails to appear for any scheduled hearing without prior notification or evidence of extenuating circumstances, this shall be considered to constitute withdrawal of the grievance or appeal.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-320 Administrative, faculty and staff grievances.** Any administrator, faculty member or staff member who is the subject of a student's (~~((grievance))~~) complaint and who is dissatisfied with the results of any level of the student (~~((grievance))~~) complaint proceedings may file a grievance under the appropriate grievance procedure established by Skagit Valley College.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-350 Effective date of the rules of conduct.** The rules contained within this chapter shall become effective (~~((July 1, 2005))~~) November 1, 2009.

**WSR 09-19-136  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed September 22, 2009, 3:49 p.m., effective October 23, 2009]

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

Purpose: WAC 458-20-272 (Rule 272) explains the tire fee imposed under RCW 70.95.510, which is a \$1 fee imposed on each new replacement vehicle tire sold at retail. The \$1 fee was scheduled to expire June 30, 2010. Senate bill (chapter 261, Laws of 2009) eliminated this statutory expiration date.

The department has amended Rule 272 to remove the outdated language concerning the expiration date.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-272 Tire fee—Core deposits or credits.

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

Other Authority: RCW 70.95.630 and 70.95.640.

Adopted under notice filed as WSR 09-15-104 on July 15, 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 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 22, 2009.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-12-017, filed 5/26/06, effective 6/26/06)

**WAC 458-20-272 Tire fee—Core deposits or credits.** (1) **Introduction.** This section describes the tire fee imposed under RCW 70.95.510 and the business and occupation (B&O), sales, and use tax consequences related to battery core charges and core deposits or credits, including the exemptions described in RCW 82.08.036 and 82.12.038.

(2) **Tire fee.**

(a) **What is the tire fee?** (~~Beginning July 1, 2005, sellers must collect~~) The tire fee is a one-dollar fee collected by the seller from the buyer on every retail sale of each new replacement vehicle tire. If new tires are leased, the fee must be collected once at the beginning of the lease. (~~The tire fee is effective until June 30, 2010.~~)

(b) **How do I report the tire fee?** A seller must report on the excise tax return the number of new replacement vehicle tires sold. Tire sellers may retain ten percent of the fee and must remit the remainder to the department of revenue (department). As a result, the amount that must be reported and paid to the department is the number of new replacement vehicle tires sold during the tax reporting period multiplied by ninety cents.

(c) **What if the seller fails to collect the fee or does not pay the fee on time?** The seller is personally liable for payment of the fee, whether or not the fee is collected from the buyer. Any seller who appropriates or converts the fee collected to his or her own use or to any use other than the payment of the fee by the due date, minus the ten percent retained, is guilty of a gross misdemeanor. Interest and penalties apply to late payments. Refer to WAC 458-20-228 (Returns, ~~(remittances)~~ payments, penalties, extensions, interest, stay of collection) for more information.

(d) **What happens if a buyer fails to pay the fee?** The tire fee, until paid by the buyer to the seller or the department, is considered a debt from the buyer to the seller. Any buyer who refuses to pay the fee is guilty of a misdemeanor.

(e) **Is sales tax imposed on the tire fee?** No. The measure of the sales tax does not include the tire fee. See RCW 82.08.036.

(f) **Is the ten percent amount retained by the seller taxed?** Yes. The seller must report the retained amount as gross income under the service and other activities tax classification on the excise tax return.

(g) **What tires are subject to the tire fee?** All new replacement vehicle tires are subject to the tire fee. Refer to RCW 70.95.030 for the definition of "vehicle."

(i) Examples of vehicles for which new replacement tires are subject to the fee include:

- (A) Automobiles;
- (B) Trucks;
- (C) Recreational vehicles;
- (D) Trailers;
- (E) All-terrain vehicles (ATVs);
- (F) Agricultural vehicles, such as tractors or combines;
- (G) Industrial vehicles, such as forklifts;
- (H) Construction vehicles, such as loaders or graders;

and

(I) Golf carts.

(ii) Bicycles, wheelbarrows, and hand trucks are examples of devices to which the new replacement tire fee does not apply.

(iii) The tire fee does not apply to the sale of retreaded vehicle tires. Nor does it apply to tires provided free of charge under the terms of a recall or warranty.

(h) **May I refund the fee if a tire is returned?** If a customer returns the purchased new tire and the entire selling price is refunded to the customer, the one-dollar tire fee is likewise refundable. The refunded amount may be claimed

on the excise tax return in the same manner as refunded sales tax. If the seller does not refund the full sales price to the customer, the one-dollar fee is not refundable. Refer to WAC 458-20-108 (Returned goods, allowances, cash discounts) for more information.

(i) **Does the tire fee apply on sales to the federal government or Indians and Indian tribes?** The tire fee is not imposed on sales to the federal government and need not be collected by the seller. The tire fee does not apply to sales of tires delivered to enrolled members or tribes in "Indian country." Refer to WAC 458-20-190 and 458-20-192 for more information.

(j) **If the sale is exempt from sales tax, is the tire fee due?** Statutory exemptions from sales tax do not apply to the tire fee. The tire fee is due on every retail sale of a new replacement tire whether or not sales tax is due.

### (3) Core deposits or credits - Battery core charges.

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

(i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) "Battery core charge" refers to a core deposit, not less than five dollars, which must by law be retained by the seller when a retail purchaser has no used battery to exchange or trade in. A buyer may return within thirty days of the purchase with a used battery of equivalent size and claim the core charge amount. See RCW 70.95.630 and 70.95.640.

(b) **How is tax calculated when the buyer receives a core deposit or credit?** Retail sales and use taxes do not apply to consideration received in the form of core deposits or credits when a purchaser exchanges or trades in a core for recycling or remanufacturing. Therefore, the measure of the sales or use tax may be reduced by the amount of the core deposit or credit. See RCW 82.08.036 and 82.12.038. The core deposit and credit exemptions apply only to the retail sales and use taxes. There is no equivalent exemption or deduction for B&O tax purposes. Therefore, the amount reported under the appropriate B&O tax classification must include the value of core deposits or credits.

(c) **Examples.** This subsection provides examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example 1.** A customer purchases at retail a new replacement battery and reconditioned starter, providing the seller with a battery core and a starter core in exchange. The selling price of the new battery, including the battery core charge, is \$60.00. The customer is allowed a \$5.00 credit because a battery core is exchanged, meaning the cost of the battery to the customer, excluding sales tax, is \$55.00. The selling price of the starter is \$50.00. The seller allows a \$3.00 credit for the starter core, meaning the cost to the customer, excluding sales tax, is \$47.00. Retailing B&O tax is due upon the total value of cash plus core value, in this case \$110.00, or \$60.00 plus \$50.00. However, the \$8.00 of core deposits or credits may be deducted from the measure of the

retail sales tax under RCW 82.08.036. Thus, retail sales tax is due on \$102.00, or \$55.00 plus \$47.00.

(ii) **Example 2.** The seller delivers the starter and battery cores accepted in the exchange to wholesalers. A starter wholesaler issues a refund and a battery wholesaler issues a credit memorandum to be applied against future wholesale battery purchases. The return of the used products by the auto parts store for recycling or remanufacturing and subsequent receipt of a refund or credit for the core deposit or credit is not considered taxable consideration for purposes of the B&O tax.