WSR 10-19-141
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Financial Services Administration)
[Filed September 22, 2010, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-051.

Title of Rule and Other Identifying Information: The department is amending chapter 388-02 WAC, department hearing rules.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on November 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 9, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant by October 26, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

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

A. Rules to promote timeliness.

1. Prehearing conferences: The proposed rule revision makes a prehearing conference mandatory if a prehearing conference is requested by either party and clarifies the administrative law judge (ALJ) responsibility to record the prehearing. Prehearing conferences can help expedite or settle cases.

2. Notice of hearings: The proposed rule revision requires office of administrative hearings (OAH) to mail hearing notices not less than fourteen days before the hearing in most situations and requires rescheduling if requested by a party when adequate notice is not given. The proposed rule revision also requires OAH to send copies of requests for hearing to the department unless the request was received from the department. These changes support prehearing planning and opportunities for communication and settlement.

3. Late requests for review: The proposed rule revision changes the standard for granting review when a request is late from "good reason" to "good cause" to comport with the standard used elsewhere in the rules regarding the issues of lateness or failure to act.

4. Hearing record content: The proposed rule revision sets forth the required contents for administrative hearing files. Missing items can delay board of appeals (BOA) review.

B. Rules to make other process improvements.

5. Review standards: The proposed rule revision deletes review standards from the hearing rules to comport with applicable published case law and the Administrative Procedure Act.

6. What laws apply: The proposed rule revision clarifies that the ALJ should apply the substantive rules that were in effect when the department made its original decision, notwithstanding subsequent amendments, and the procedural rules that were in effect on the date the procedure was followed.

7. The proposed rule revision clarifies when notice is required regarding assignment of ALJs and the grounds and procedures for a motion of prejudice.

8. The proposed rule revision deletes the ALJ's authority to dismiss or reverse department actions when the department does not attend a prehearing conference.

9. The proposed rule revision addresses the effect of the department's indexed final orders. The RCW permits an agency to cite a final order (such as a BOA review decision) as precedent if it is included in the agency's published index of significant decisions. The proposed rule revision informs parties of this authority.

10. Equitable estoppel: The proposed rule revision clarifies the circumstances under the law in which department statements or actions which were relied upon by the appellant may be used by the appellant to defend against a department action (such as collection of an overpayment). The proposed rule amendments are made so that the rule comports with applicable appellate case law.

11. Limited authority of ALJs: The proposed rule revision clarifies that under existing law, ALJs do not have the same equitable powers as a superior court judge.

12. The proposed rule revision clarifies when and how a hearing can be converted from one format to another (i.e. in-person versus telephonic).

13. The proposed rule revision makes corrections for grammar and other minor changes for clarification.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220.

Statute Being Implemented: Chapter 34.05 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Conant, 1115 Washington Street S.E., Olympia, WA 98504, (360) 664-6081.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules adopt, amend, or repeal "a procedure, practice or requirement relating to agency hearings" and under RCW 19.85.025(3) and 34.05.310 (4)(g)(i), a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are "procedural rules" related to agency hearings and do not meet the definition of a "significant legislative rule" under RCW 34.05.328 (5)(c)(iii). Under RCW 34.05.328 (5)(a)(i), a cost-benefit analysis is

only required for significant legislative rules. A cost-benefit analysis is not required for procedural rules.

September 20, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

WAC 388-02-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrative law judge (ALJ)" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not ((~~DSHS~~)) department employees or ((~~DSHS~~)) department representatives.

"BOA" means the ((~~DSHS~~)) board of appeals.

"Business days" means all days except Saturdays, Sundays and legal holidays.

"Calendar days" means all days including Saturdays, Sundays and legal holidays.

"Deliver" means giving a document to someone in person.

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

"Documents" means papers, letters, writings, or other printed or written items.

"DSHS" means the department of social and health services.

"DSHS or department representative" means an employee of ((~~DSHS~~)) the department, a ((~~DSHS~~)) department contractor, or an assistant attorney general authorized to represent ((~~DSHS~~)) the department in an administrative hearing. ((~~DSHS~~)) Department representatives include, but are not limited to, claims officers and ((~~fair~~)) administrative hearing coordinators.

"Final order" means an order that is the final ((~~DSHS~~)) department decision.

"Hearing" means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about ((~~DSHS~~)) department programs. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code (WAC), chapter 10-08 WAC, or other law.

"Initial order" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

"Judicial review" means a superior court's review of a final order.

"Mail" means placing ((~~the~~)) a document in the mail with the proper postage.

"OAH" means the office of administrative hearings, a separate state agency from ((~~DSHS~~)) the department.

"Party" means:

(1) The department or DSHS; or

(2) A person or entity:

(a) Named in a ((~~DSHS~~)) department action;

(b) To whom a ((~~DSHS~~)) department action is directed; or

(c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"Prehearing meeting" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"Program" means a ((~~DSHS~~)) department organizational unit and the services that it provides, including services provided by ((~~DSHS~~)) department staff and through contracts with providers. Organizational units include, but are not limited to, administrations and divisions.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" means a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" means a decision-maker with expertise in ((~~DSHS~~)) department rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In ((~~come~~)) some cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. ((~~When~~)) After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by ((~~DSHS~~)) the department, are located in the ((~~DSHS~~)) board of appeals (BOA), and are not part of the ((~~DSHS~~)) department program involved in the review. See WAC 388-02-0600 for information on the authority of a review judge.

"Rule" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"Should" means that an action is recommended but not required.

"Stay" means an order temporarily halting the ((~~DSHS~~)) department decision or action.

"You" means any individual or entity that has a right to be involved with the ((~~DSHS~~)) department hearing process, which includes a party or a party's representative. "You" does not include ((~~DSHS~~)) the department or its representative.

AMENDATORY SECTION (Amending WSR 09-05-032, filed 2/11/09, effective 3/14/09)

WAC 388-02-0025 Where is the office of administrative hearings located? (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
2420 Bristol Court SW((~~, 1st Floor~~))
P.O. Box 42488
Olympia WA 98504-2488
(360) 664-8717
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

Olympia
Office of Administrative Hearings
2420 Bristol Court SW((~~, 3rd Floor~~))
P.O. Box 42489
Olympia, WA 98504-2489
(360) 753-2531
1-800-583-8271
fax: (360) 586-6563

Seattle
Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
(206) 389-3400
1-800-845-8830
fax: (206) 587-5135

Vancouver
Office of Administrative Hearings
5300 MacArthur Blvd., Suite 100
Vancouver, WA 98661
(360) 690-7189
1-800-243-3451
fax: (360) 696-6255

Spokane
Office of Administrative Hearings
Old City Hall Building, 5th Floor
221 N. Wall Street, Suite 540
Spokane, WA 99201
(509) 456-3975
1-800-366-0955
fax: (509) 456-3997

Yakima
Office of Administrative Hearings
32 N 3rd Street, Suite 320
Yakima, WA 98901-2730
(509) 575-2147
1-800-843-3491
fax (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: **www.oah.wa.gov.**

NEW SECTION

WAC 388-02-0037 When must the OAH reschedule a proceeding based on the amount of notice required? Any party may request that the proceeding be rescheduled and OAH must reschedule if:

(1) A rule requires the OAH to provide notice of a proceeding; and

(2) The OAH does not provide the amount of notice required.

NEW SECTION

WAC 388-02-0038 When may the OAH shorten the amount of notice required to the parties of a proceeding? The ALJ and the parties may agree to shorten the amount of notice required by any rule.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0110 What happens after you request a hearing? (1) After you request a hearing, the OAH sends the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. ((~~For certain types of hearings,~~)) The parties may also receive a written notice of a prehearing conference. You may receive a notice of a prehearing conference either before or after receiving the notice of the hearing.

(2) Before your hearing is held:

(a) ((~~DSHS~~)) The department may contact you and try to resolve your dispute; and

(b) You are encouraged to contact ((~~DSHS~~)) the department and try to resolve your dispute.

(3) If you do not appear for your hearing, an ALJ may enter an order of default or an order dismissing your hearing according to WAC 388-02-0285.

NEW SECTION

WAC 388-02-0157 How does a party appear? (1) If you are going to represent yourself, you should provide the ALJ and other parties with your name, address, and telephone number.

(2) If you are represented, your representative should provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The presiding officer may require your representative to file a written notice of appearance or to provide documentation that you have authorized the representative to appear on your behalf. In cases involving confidential information, your representative must file a signed written release of information on department form 17-063.

(4) If your representative is an attorney admitted to practice in this state, your attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If you or your representative have put in a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if you or your representative do not appear by calling in with a telephone number before a hearing (including a prehearing).

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0195 What is a prehearing conference? (1) A prehearing conference is a formal ((~~meeting~~)) proceeding conducted on the record by an ALJ to prepare for a hearing. The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

(2) ((~~Either the ALJ or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the conference to all parties.~~

(~~3~~)) An ALJ may conduct the prehearing conference in person, by telephone conference call, ((~~by electronic means,~~)) or in any other manner acceptable to the parties. Your attendance is mandatory.

(((~~(4) A party~~)) (3) You may lose the right to participate during the hearing if ((~~that party does~~)) you do not attend the prehearing conference.

NEW SECTION

WAC 388-02-0197 When is a prehearing conference scheduled? (1) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(2) The ALJ must grant the first request for a prehearing conference if it is received by the OAH at least seven business days before the scheduled hearing date.

(3) The ALJ may grant untimely or additional requests for prehearing conferences.

(4) If the parties do not agree to a continuance, the OAH and/or the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance.

(5) The OAH must schedule prehearing conferences for all cases which concern actions of the following department programs:

(a) Adult protective services; and

(b) The division of residential care services.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0205 What happens after a prehearing conference? (1) After the prehearing conference ends, the ALJ must ((~~send~~)) enter a written prehearing order describing:

(a) The actions taken;

(b) Any changes to the documents; ((~~and~~))

(c) Any agreements reached; and

(d) Any ruling of the ALJ.

(2) The ALJ must send the prehearing order to the parties at least fourteen calendar days before the scheduled hearing, except a hearing may still occur as allowed under WAC 388-02-0280(5). The parties and the ALJ may agree to a shorter time period.

(3) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(((~~(3)~~)) (4) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(((~~(4)~~)) (5) The ALJ may take further appropriate actions to address other concerns.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0210 What happens if a party does not attend a prehearing conference? (1) All parties are required to attend a prehearing conference.

(2) If you do not attend, you may not be allowed to participate in the hearing. The ALJ may dismiss your hearing request or enter an order of default against you.

(((~~(3) If DSHS does not attend, the ALJ may dismiss or reverse the action DSHS took against you.~~)))

NEW SECTION

WAC 388-02-0216 Is the authority of the administrative law judge and the review judge limited? The authority of the ALJ and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0220 What rules and laws must an ALJ and review judge apply when conducting a hearing or making a decision? (1) ALJs and review judges must first apply the ((~~DSHS~~)) department rules adopted in the Washington Administrative Code.

(2) If no ((~~DSHS~~)) department rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules that were in effect on the date the department notice was sent, unless otherwise required by other rule or law. If the department amends the notice, the ALJ and review judge must apply the rules that were in effect on the date the initial notice was sent, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time the department has to process your application for services, benefits or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

(7) If you have a dispute with the department concerning the working connections child care (WCCC) program, the ALJ and review judge must apply the hearing rules in this chapter and not the hearing rules in chapter 170-03 WAC. The rules in this chapter apply to disputes between you and the department of social and health services.

NEW SECTION

WAC 388-02-0221 How is the index of significant decisions used? (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the department index of significant decisions.

(2) The department index of significant decisions is available to the public at www.dshs.wa.gov/boa. For information on how to obtain a copy of the index, see WAC 388-01-190.

(3) If a precedential published decision entered by the Court of Appeals or the Supreme Court reverses an indexed board of appeals final order, that order will be removed from the index of significant decisions.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0230 When is the ALJ assigned to the hearing? The OAH assigns an ALJ at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date. For division of child support cases, the OAH will only be required to assign an ALJ at least five days before the hearing if such a request is specifically made by one of the parties.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0240 How does a party file a motion of prejudice? (1) A party may request a different ALJ by sending a written motion of prejudice ((~~at least three business days before the hearing, or~~)) to the OAH before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

(a) Granting or denying a request for a continuance; and

(b) Granting or denying a request for a prehearing conference.

(3) ((~~The~~)) A party must send the ((~~request~~)) written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-02-0025(1) and must send a copy to the OAH field office where the ALJ ((~~works~~)) is assigned.

(((~~3~~))) (4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or

(b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first ((~~timely~~)) request for a different ALJ is automatically granted. ((~~Any later request may be granted or denied by~~)) The chief ALJ or a designee grants or denies any later requests.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0250 What happens after you request a hearing, and when must the OAH provide notice of the hearing and prehearing conference? (1) ((~~After you request a hearing,~~)) The OAH must send a copy of your hearing request to the department, unless the OAH received your hearing request from the department. The OAH should send it to the department within four business days of the OAH receiving your request.

(2) The OAH ((~~sends~~)) must send a notice of hearing to all parties and their representatives((~~. OAH sends the notice of hearing at least seven business days~~)) at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(((~~2~~))) (3) If the OAH ((~~may~~)) schedules a prehearing conference((~~.~~)), the OAH ((~~sends~~)) must send a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference ((~~date~~)) except:

(a) The OAH and/or an ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-02-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

(((~~3~~))) (6) You may ask for a prehearing meeting even after you have requested a hearing.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0260 May ((~~DSHS~~)) the department amend a notice? (1) The ALJ must allow ((~~DSHS~~)) the department to amend (change) the notice of a ((~~DSHS~~)) department action before or during the hearing to match the evidence and facts.

(2) ((~~DSHS~~)) The department must put the change in writing and give a copy to the ALJ and ((~~the other~~)) all parties.

(3) The ALJ must offer to continue ((~~or~~)) (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier ((~~DSHS~~)) department notice.

(4) If the ALJ grants a continuance, the OAH must send, a new hearing notice at least ((~~seven business~~)) fourteen calendar days before the hearing date. The OAH must provide

notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0265 May you amend your hearing request? (1) The ALJ may allow you to amend your hearing request before or during the hearing.

(2) The ALJ ((~~may~~)) must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument ((~~because of~~)) if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the OAH must send a new hearing notice at least ((~~seven business~~)) fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0280 Who may request a continuance? (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the OAH or ((~~DSHS~~)) the department must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ ((~~grants~~)) must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ ((~~sets~~)) must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-02-0197 and 388-02-0250.

(4) If ((~~a continuance is granted, OAH sends notice of the changed time and date of the hearing~~)) the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0340 How is your hearing held? (1) Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where((~~:~~

~~(a) The parties appear face-to-face with the ALJ; or~~

~~(b) The parties appear by video conference~~)) you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

(((~~3~~))) (4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(((~~4~~))) (5) Parties ((~~or~~)) and their witnesses may appear in person or by telephone conference ((~~at the discretion of the ALJ~~)). The ALJ may require parties and/or their witnesses to appear in person if the ALJ determines there is a compelling reason, and the compelling reason is stated in a hearing notice or prehearing order.

(6) After a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if the ALJ determines there is a compelling reason to do so.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0350 Is your hearing recorded? ((~~An~~)) The ALJ must ((~~tape~~)) record ((~~or provide a record or transcript of the hearing~~)) the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0360 May a party convert how a hearing is held? (1) The parties have the right to request that:

(a) A hearing format be converted (changed) to an in-person hearing or a telephone conference; or

(b) A witness appear in person or by telephone conference. The OAH must advise you of the right to request a change in how a witness appears.

(2) ((~~In all DSHS cases, except public assistance cases,~~)) Except as provided in subsection (4) of this section, a party requesting a change in how a hearing is held must show ((~~good cause~~)) a compelling reason. A party must also show ((~~good cause~~)) a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of ((~~good cause~~)) compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the ALJ to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert how a hearing is held can be overcome by a compelling reason not to convert how a hearing is held.

(4) In public assistance cases, a party has the right to request that a hearing be changed without showing ((~~good cause~~)) a compelling reason to the ALJ. Public assistance programs include:

(a) Temporary assistance for needy families (TANF);

(b) ((~~General or medical assistance~~)) Working connections child care;

(c) Disability lifeline;

(d) Medical assistance;

(e) Food ((~~stamps~~)) assistance; and

(((~~d~~))) (f) Refugee assistance.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0480 What does burden of proof mean? ((~~The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct~~)) (1) Burden of proof is a party's responsibility to:

(a) Provide evidence regarding disputed facts; and

(b) Persuade the ALJ that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 388-02-0485.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0495 What is equitable estoppel? (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent ((~~DSHS~~)) the department from taking some action against you, such as collecting an overpayment. Equitable estoppel may not be used to require the department to continue to provide something, such as benefits, services, or a license, or to require the department to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) ((~~DSHS~~)) The department made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by ((~~DSHS~~)) the department. For example, ((~~DSHS~~)) the department gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on ((~~DSHS'~~)) the department's original statement, action or failure to act. For example, you believed ((~~DSHS~~)) the department acted correctly when you received money.

(c) You will be injured to your detriment if ((~~DSHS~~)) the department is allowed to contradict the original statement, action or failure to act. For example, you did not seek help from health clinics or food banks because you were receiving benefits from ((~~DSHS~~)) the department, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. ((~~For example,~~)) Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) You cannot afford to repay the money to ((~~DSHS, and~~)) the department;

(ii) You gave ((~~DSHS~~)) the department timely and accurate information when required ((~~but~~));

(iii) You did not know that ((~~DSHS~~)) the department made a mistake;

(iv) You are free from fault; and

(v) The overpayment was caused solely by a department mistake.

(e) The exercise of government functions is not impaired. For example, the ((~~overpayment was not your fault and it was caused solely by a DSHS mistake~~)) use of equitable estoppel in your case will not result in circumstances that will impair department functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, ((~~DSHS~~)) the department is stopped or prevented from taking action or enforcing a claim against you.

NEW SECTION

WAC 388-02-0512 What is included in the hearing record? (1) The ALJ must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0515 What happens after the record is closed? (1) After the record is closed, the ALJ must ((~~write a hearing decision~~)) enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many ((~~DSHS~~)) department programs have earlier deadlines. Specific program rules may set the deadlines.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent, and include all parts required by WAC 388-02-0512.

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

WAC 388-02-0575 ((~~How does~~)) What must a party ((~~request~~)) include in the review request? A party must make the review request in writing((~~,~~)) and send it to BOA((~~, and clearly~~)). The party should identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

WAC 388-02-0580 What is the deadline for requesting review by a review judge? (1) BOA must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good ((~~reason~~)) cause for missing the deadline.

(4) If you ask a review judge to review an ALJ decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

WAC 388-02-0590 How does the party that is not requesting review respond to the review request? (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond, that party must send the response so that BOA receives it on or before the seventh business day after the date the other party's review request was mailed to the party by BOA.

(3) The party ((~~must~~)) should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

WAC 388-02-0600 What is the authority of the review judge? (1) Review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the ALJ. The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the OAH for further action.

((~~(2) The review judge has the same decision-making authority as the ALJ when reviewing initial orders in the following cases, but must consider the ALJ's opportunity to observe the witnesses:~~

~~(a) Licensing, certification and related civil fines;~~

~~(b) Rate-making proceedings;~~

~~(c) Parent address disclosure;~~

~~(d) Temporary assistance to needy families (TANF);~~

~~(e) Working connections child care (WCCC);~~

~~(f) Medical assistance eligibility;~~

~~(g) Medical or dental services funded by Title XIX of the Social Security Act;~~

~~(h) Adoption support services; and~~

~~(i) Eligibility for client services funded by Title XIX of the Social Security Act and provided by the aging and disability services administration.~~

~~(3) In all other cases, the review judge may only change the initial order if:~~

~~(a) There are irregularities, including misconduct of a party or misconduct of the ALJ or abuse of discretion by the ALJ, that affected the fairness of the hearing;~~

~~(b) The findings of fact are not supported by substantial evidence based on the entire record;~~

~~(c) The decision includes errors of law;~~

~~(d) The decision needs to be clarified before the parties can implement it; or~~

~~(e) Findings of fact must be added because the ALJ failed to make an essential factual finding. The additional findings must be supported by substantial evidence in view of the entire record and must be consistent with the ALJ's findings that are supported by substantial evidence based on the entire record.~~

~~(4)~~)) (3) Review judges may not review ALJ final orders((~~. See~~)) for the types of cases listed in WAC 388-02-0217(2) ((~~for cases in which the ALJ enters a final order~~)).

(((~~(5)~~))) (4) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-02-0218.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0030 ((~~Where is the board of appeals located~~)) How do I contact the board of appeals? (1) ((~~The mailing address of the DSHS board of appeals (BOA) is:~~

~~DSHS Board of Appeals~~

~~P.O. Box 45803~~

~~Olympia, WA 98504-5803;~~

~~(2) The general telephone numbers of the BOA are:~~

~~(360) 664-6100~~

~~1-877-351-0002 (toll free)~~

~~(360) 664-6178 (TTD)~~

~~(360) 664-6187 (fax);~~

~~(3) The physical location of the DSHS Board of Appeals (BOA) is:~~

~~Blake Office Bldg. East, 2nd Floor~~

~~4500 10th Ave. SE~~

~~Lacey, WA 98503~~)) The information included in this section is current at this time of rule adoption, but may change. Current information and additional contact information are available on the department's internet site, in person at the board of appeals office, or by a telephone call to the board of appeal's main public number.

Department of Social and Health Services Board of Appeals	
Location	Office Building 2 (OB-2) First Floor Information 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803
Telephone	(360) 664-6100
Fax	(360) 664-6187
Toll free	1-877-351-0002
Internet web site	www.dshs.wa.gov/boa

WSR 10-20-001
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 22, 2010, 1:20 p.m.]

Continuance of WSR 10-17-026.

Preproposal statement of inquiry was filed as WSR 08-08-099.

Title of Rule and Other Identifying Information: Revises WAC 181-77-005, contains technical errors describing requirements for career and technical education (CTE) certificates in mathematics and science. Changes errors and citations.

Hearing Location(s): Comfort Inn Guesthouse, 1620 74th Avenue S.W., Tumwater, WA, US, 98501, on November 9, 2010, at 8:30 a.m.

Date of Intended Adoption: November 9, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 1, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by November 1, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Language related to CTE certification was unclear regarding specific instruction areas.

Reasons Supporting Proposal: Stakeholder recommendations.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

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

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

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

September 22, 2010
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

WAC 181-77-005 Types of career and technical education certificates. The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

(a) Agriculture education;
(b) Business and marketing education;
(c) Family and consumer sciences education;
(d) Technology education;
(e) Trade and industrial;
(f) Health occupations;
(g) Career choices;
(h) Coordinator for worksite learning; or
(i) New and emerging fields;

(j) Categories which may be added to a continuing career and technical education certificate are:

(i) Mathematics applied. To add this category, the candidate shall:

(A) ((~~Have completed a state approved career and technical education preparation program based on business and industry under chapter 181-77A WAC;~~)) Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold ((~~an approved~~)) a baccalaureate degree or higher in a math-related area such as engineering from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) ((~~Hold a continuing career and technical education certificate with a technology education or trade and industrial category under this section: Provided, That trade and industrial candidates hold a math-related degree in mathematics or engineering;~~

~~(D)~~)) Be fully contracted as a teacher or long-term substitute teacher by a Washington public school;

(((~~(E)~~))) (D) Pass the mathematics subject knowledge test approved by the professional educator standards board; and

(((~~(F)~~))) (E) Document a minimum of one year teaching experience in technology education or ((~~trade and industrial~~)) skilled and technical science courses.

(ii) Science applied, CTE biology applied, chemistry applied, physics or earth and space science applied. To add ((~~this category~~)) these categories, the candidate shall:

(A) ((~~Have completed a state approved career and technical education teacher preparation program based on business and industry under chapter 181-77A WAC;~~)) Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold ((~~an approved~~)) a baccalaureate degree or higher in a science-related area such as engineering or in a medical field from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) ((~~Hold a continuing career and technical education certificate with an agriculture education, health occupations, or trade and industrial category under this section: Provided, That trade and industrial candidates hold a science-related degree in science, engineering, or a medical practice field;~~

~~(D)~~)) Be fully contracted as a teacher or long-term substitute by a Washington public school;

((~~(E)~~)) (D) Pass the appropriate science, biology, chemistry, physics, or earth and space science subject knowledge test approved by the professional educator standards board; and

((~~(F)~~)) (E) Document a minimum of one year teaching experience in agriculture education, health occupations, or ((~~trade and industrial~~)) skilled and technical science courses.

((~~(iii) CTE teachers who have earned a mathematics applied or science applied category are eligible for teaching assignments in general education mathematics or science courses, dependent upon the category on the continuing career and technical education certificate, under WAC 181-77-025.~~))

(2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

WAC 181-77-025 Personnel assignment. Career and technical education teachers teaching other secondary school subjects and career and technical education counselors serving in addition as general counselors need to hold a valid certificate as provided for in chapter 181-79A WAC. ((~~Career and technical education teachers who hold a mathematics applied category are eligible to teach general education mathematics, and career and technical education teachers who hold a science applied category are eligible to teach general education science under WAC 181-77-005.~~)) CTE teachers who have earned a certificate for CTE mathematics, CTE science, CTE biology, CTE chemistry, CTE physics, or CTE earth and space science category are eligible for teaching assignments in general education mathematics, science, biology, chemistry, physics, or earth and space science courses, dependent upon the category on the continuing career and technical education certificate.

WSR 10-20-009
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 10-07—Filed September 23, 2010, 1:23 p.m.]

Continuance of WSR 10-16-129.

Preproposal statement of inquiry was filed as WSR 10-09-063.

Title of Rule and Other Identifying Information: Chapter 173-18 WAC, Shoreline Management Act—Streams and rivers constituting shorelines of the state; chapter 173-20 WAC, Shoreline Management Act—Lakes constituting shorelines of the state; chapter 173-22 WAC, Adoption of designations of shorelands and wetlands associated with shorelines of the state; chapter 173-26 WAC, State master program approval/amendment procedures and master program guidelines; and chapter 173-27 WAC, Shoreline Management Act permit and enforcement procedures.

Date of Intended Adoption: February 10, 2011.

Submit Written Comments to: Cedar Bouta, Washington Department of Ecology, SEA Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail ShorelineRule@ecy.wa.gov, fax (360) 407-6902, by November 23, 2010, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jackie Chandler by TTY (711) or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To extend the public comment period to November 23, 2010.

Statutory Authority for Adoption: RCW 90.58.120 Adoption of rules and 90.58.200 Rules and regulations. RCW 90.58.060 limits amendments to chapter 173-26 WAC, Part III (shoreline master program guidelines) to one update per year. Authority to address geoduck aquaculture is found in RCW 43.21A.681.

Statute Being Implemented: Shoreline Management Act, chapter 90.58 RCW and RCW 43.21A.681.

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

Name of Proponent: Washington department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Cedar Bouta, Washington Department of Ecology Headquarters, (360) 407-6406; Implementation and Enforcement: Brian Lynn, Washington Department of Ecology Headquarters, (360) 407-6224.

September 23, 2010
Polly Zehm
Deputy Director

WSR 10-20-016
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed September 24, 2010, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-125.

Title of Rule and Other Identifying Information: Amends WAC 181-82A-204 to assure that pathway candidates hold the endorsement related to the pathway.

Hearing Location(s): Comfort Inn, 1600 74th Avenue S.W., Tumwater, WA 98501, on November 9, 2010, at 8:30 a.m.

Date of Intended Adoption: November 9, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 2, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by November 2, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Reduces burden on teachers wanting to add endorsements to their certificates.

Reasons Supporting Proposal: Stakeholders recommendations.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

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

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

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

September 24, 2010
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 10-16-016, filed 7/22/10, effective 8/22/10)

WAC 181-82A-204 Endorsement requirements. (1) Candidates completing endorsements required to obtain a residency certificate, shall complete college/university teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter.

(2) In order to add an additional endorsement, the candidate shall:

(a) Have completed a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted and published by the professional educator standards board ((~~and published by the superintendent of public instruction~~)). The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where programs require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and content-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted and published by the professional educator standards board ((~~and published by the superintendent of public instruction~~)). The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d)(i) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted and published by the professional educator standards board ((~~and published by the superintendent of public instruction~~)). The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted and published by the professional educator standards board ((~~and published by the superintendent of public instruction~~)). The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, ((~~in~~)) while holding the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 2 endorsement.

The ninety day teaching requirement is waived per RCW 28A.660.045 for individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate and pursuing an endorsement in middle level mathematics or science.

(ii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

WSR 10-20-071
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 29, 2010, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-111.

Title of Rule and Other Identifying Information: Revises WAC 181-02-002 to accept passage of the Paraxis II test in lieu of the WEST-E content test requirement for endorsement.

Hearing Location(s): Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA 98501, on November 9, 2010, at 8:30 a.m.

Date of Intended Adoption: November 9, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 2, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by November 2, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Paraxis II content tests are available nationwide. With on-line teaching, teacher[s] in other states my [may] now take the Paraxis II exam instead of being required to seek a Washington location test center in order to pass the WEST-E.

Reasons Supporting Proposal: Stakeholder recommendations.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

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

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

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

September 29, 2010
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-11-160, filed 5/24/06, effective 6/24/06)

WAC 181-02-002 WEST-E exemptions. (1) Individuals who hold a certificate through the National Board for Professional Teaching Standards are exempt from the WEST-E requirement if there is a direct equivalency between the endorsement sought and the national board certificate, as approved by the professional educator standards board and published by the superintendent of public instruction. The equivalent National Board for Professional Teaching Standards and Washington endorsement table approved by the professional educator standards board may not be changed without prior professional educator standards board approval.

(2) Candidates who are prepared and/or certified out-of-state applying for a Washington state residency or professional teaching certificate based on WAC 181-79A-257 (1)(b) or 181-79A-260, in lieu of passing a WEST-E to earn an endorsement(s), may provide official documentation of scores on the Praxis II tests for which the professional educator standards board has set a passing score.

WSR 10-20-078
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 29, 2010, 1:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-099.

Title of Rule and Other Identifying Information: Revises WAC 181-78A-110, 181-78A-115 and 181-78A-120 to provide for a compliance agreement in addition to an appeal process for preparation programs who are denied approval by the professional educator standards board (PESB).

Hearing Location(s): Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA 98501, on November 9, 2010, at 8:30 a.m.

Date of Intended Adoption: November 9, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 2, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by November 2, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, programs denied approval may appeal and/or receive limited approval. The rule change will add an option to enter into a compliance agreement with the PESB and continue operating while addressing corrective measures.

Reasons Supporting Proposal: Stakeholder recommendations.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: PESB, governmental.

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

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

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

September 29, 2010
David Brenna
Legislative and
Policy Coordinator

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

WAC 181-78A-110 Length of time for which program approval status shall be granted. (1) Existing programs. Based upon review of the program site visit report and other documentation requested, and taking into consideration: The degree to which previously identified issues have been successfully addressed, the relationship and balance between program strengths and weaknesses, and the relative importance of specific unmet criteria to the overall function of the program, the professional educator standards board shall ((~~take~~)) exercise professional judgment in taking one of the following actions:

(a) ((~~One-year~~)) Limited, approval((~~:~~)) of up to one year in length. In issuing limited approval, and depending on the nature of evidence that must be considered to regain full approval, the board may specify the requirement of a:

(i) Focused-site visit related to unmet standards; or

(ii) Written report, related to unmet standards.

(b) ((~~Five-year~~)) Full approval((~~:~~

~~(c) Seven-year approval (WAC 181-78A-100(6))~~)) of either:

(i) Five years; or

(ii) Seven years, per provisions of WAC 181-78A-100(6); or

(((~~d~~))) (c) Disapproval (WAC 181-78A-115)((~~.~~)):

(i) A program with full five- or seven-year approval prior to the site visit shall not receive a disapproval rating, except under the provisions of subsection (3) of this section.

(ii) A program awarded a disapproval rating may request a hearing conducted through the office of administrative hearings under WAC 181-78A-100 (7)(g) and 10-08-035.

(2) New programs. All new programs shall be conditionally approved for up to two years under WAC 181-78A-105.

(3) The ((~~superintendent of public instruction~~)) professional educator standards board, upon receipt of a serious complaint from any source or upon ((~~her or his initiative, or~~)) its own initiative ((~~of the professional educator standards board~~)) prompted by indications of the need for response, may at any time review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations are found, the professional educator standards board is authorized to ((~~rescind program approval until the college or university submits an acceptable compliance agreement which will bring the preparation program into compliance as soon as reasonably practicable, but no later than the commencement of the succeeding academic year or six calendar months, whichever is later.~~

~~(4) If an acceptable compliance agreement is not developed and approved by the professional educator standards board, the preparation program shall be placed on probationary status and the probationary status provision of WAC 181-78A-115 shall apply~~)) change the program's current approval status, including full disapproval.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-115 ((~~Probationary status.~~)) Disapproved programs. ((~~Colleges and universities with~~)) Approved preparation programs shall not lose official approval status until the professional educator standards board has taken final action to disapprove the preparation program((~~: Provided, That colleges or universities~~)) pending the provisions under WAC 181-78A-110 (1)(d)(ii) programs shall be permitted ((~~for the current and one additional academic year~~)) to continue to prepare and recommend for certification candidates who have been previously admitted to the program, provided that no recommendations for certifications will be accepted later than thirty months following receipt of the formal notice of disapproval ((~~to continue as an approved preparation program on probationary status for the purpose of completing the preparation program for those candidates for certification currently enrolled in the preparation program and who are scheduled to complete such preparation program within such academic years and for the purpose of regaining professional educator standards board approval~~)).

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-120 Procedures for reestablishment of approval status for an educator preparation program. (1) The procedures for the reestablishment of professional educator standards board approval of a preparation program shall be the same as the procedure for initial approval as provided in WAC 181-78A-105, except that if the preparation program continues to operate pursuant to the probationary status provision of WAC 181-78A-115, the professional educator standards board may limit the content of the written

plan required by WAC 181-78A-105(3) to program standards determined by the professional educator standards board to be the cause of the ((~~college or university's probationary~~)) program's disapproved status.

(2) A disapproved program may submit a compliance agreement for review by the professional educator standards board. If the program submits an acceptable compliance agreement, the program may be granted permission to admit new candidates for a period of time not to exceed twelve calendar months from the date of disapproval. Compliance agreements, not to exceed ten pages, must document the following:

(a) A work plan overview;

(b) A timeline of work that has been and will be performed; and

(c) A matrix that cross references components of the work plan with all unmet standards identified in the site visit report.

WSR 10-20-080
WITHDRAWAL OF PROPOSED RULES
BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[Filed September 29, 2010, 3:23 p.m.]

On Friday, September 24, 2010, the board took final action on the rule proposal filed under WSR 10-09-056 and 10-13-054. The board cast five votes against and two in favor to adopt the rules as proposed. The proposal was rejected through this vote.

The board of registration for professional engineers and land surveyors requests withdrawal of the proposed rule making filed as WSR 10-09-056 on April 16, 2010, and appearing in issue 10-09 of the State Register, and WSR 10-13-054 on June 10, 2010, and appearing in issue 10-13 of the State Register.

George A. Twiss
Executive Director

WSR 10-20-115
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed October 1, 2010, 2:39 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-254-053 Radiation machine facility registration, proposed reduction in certain X-ray registration fees.

Hearing Location(s): Department of Health, Town Center 1, Room 163, 101 Israel Road S.E., Tumwater, WA 98504, on November 16, 2010, at 2:00 p.m.

Date of Intended Adoption: November 17, 2010.

Submit Written Comments to: Traci Black, Department of Health, Office of Radiation Protection, P.O. Box 47827, Olympia, WA 98504-7827, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2255, by November 16, 2010.

Assistance for Persons with Disabilities: Contact Sharon Grundhoffer by November 9, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule reduces registration fees for certain radiation machine facilities and tubes to reflect current program costs.

Reasons Supporting Proposal: Under RCW 43.70.250, it is the policy of the state of Washington that the cost of professional, occupational, and business licensing programs be fully borne by the members of that profession, occupation, or business.

Due to the current economic climate, vacancies have not been filled and equipment and other expenditures have not been made. This has resulted in a need to reduce fees to match current program costs.

Statutory Authority for Adoption: RCW 43.70.250, 43.20B.020, 70.98.080, 43.70.110.

Statute Being Implemented: RCW 43.70.250, 43.20B.020, 70.98.080, 43.70.110.

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

Name of Proponent: Department of Health, 111 Israel Road S.E., Tumwater, WA 98504, governmental.

Name of Agency Personnel Responsible for Drafting: Traci Black, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3259; Implementation and Enforcement: Andrew Thatcher, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3231.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

October 1, 2010
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-14-118, filed 6/30/08, effective 7/31/08)

WAC 246-254-053 Radiation machine facility registration fees. (1) Radiation machine facility fees apply to each person or facility owning, leasing or using radiation-producing machines. The annual facility fee consists of the base registration fee and a per tube charge, where applicable.

(a) **Radiation Machine Facility Fees**			
	Type of Facility	**Facility Base Fee**	**Added Fee per Tube**
(i)	Dental, podiatric, veterinary uses	$((~~134~~)) 113	See following table

(a) **Radiation Machine Facility Fees**			
	Type of Facility	**Facility Base Fee**	**Added Fee per Tube**
(ii)	Hospital, medical, chiropractic uses	$207	See following table
(iii)	Industrial, research, educational, security, or other facilities	$((~~184~~)) 113	See following table
(iv)	Mammography only	$89	N/A
(v)	Bone densitometry only	$89	N/A
(vi)	Electron microscopes only	$89	N/A
(vii)	Bomb squad only	$89	N/A
(viii)	Radiation safety program as specified in subsection (3) of this section	$5,827	N/A

(b) **Radiation Machine Tube Fees**		
	Type of Tube	**Added Fee per Tube**
(i)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	$((~~46~~)) 28
(ii)	Veterinary (radiographic, fluoroscopic, portable, mobile)	$46
(iii)	Podiatric uses (radiographic, fluoroscopic)	$46
(iv)	Mammography	N/A
(v)	Bone densitometry	N/A
(vi)	Electron microscope	N/A
(vii)	Bomb squad	N/A
(viii)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	$131
(ix)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	$131
(x)	Therapy (Grenz Ray, Orthovoltage, nonaccelerator)	$131
(xi)	Accelerators (therapy, other medical uses)	$131
(xii)	Computer tomography (CT, CAT scanner)	$131
(xiii)	Stereotactic (mammography)	$((~~131~~)) 113
(xiv)	Industrial radiographic	$46
(xv)	Analytical, X-ray fluorescence	$46

(b) **Radiation Machine Tube Fees**		
	Type of Tube	**Added Fee per Tube**
(xvi)	Industrial accelerators	$46
(xvii)	Airport baggage	$((~~46~~)) 28
(xviii)	Cabinet (industrial, security, mail, other)	$((~~46~~)) 28
(((~~xiv~~))) (xix)	Other industrial uses (includes industrial fluoroscopic uses)	$((~~46~~)) 28

(2) **X-ray shielding fees.**

(a) Facilities regulated under the shielding plan requirements of WAC 246-225-030 or 246-227-150 are subject to a $344 X-ray shielding review fee for each X-ray room plan submitted; or

(b) A registrant may request an expedited plan review for $1000 for each X-ray room plan. Expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(c) If a facility regulated under WAC 246-225-030 or 246-227-150 operates without submittal and departmental review of X-ray shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of $656.

(3) **Radiation safety fee.** If a facility or group of facilities under one administrative control employs two or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee as specified in subsection (1)(a)(viii) of this section.

(4) **Consolidation of registration.** Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies to all buildings, structures and operations on one contiguous site using or identified by one physical address location designation.

(5) **Inspection fees.**

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under the base fee and tube registration fees as described in subsection (1) of this section.

(b) Facilities requiring follow-up inspections due to uncorrected noncompliances must pay an inspection follow-up fee of $118 for each reinspection required.

(6) A facility's annual registration fee is valid for a specific geographical location and person only. It is not transferable to another geographical location or owner or user.

WSR 10-20-119
PROPOSED RULES
WINE COMMISSION

[Filed October 5, 2010, 7:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-012.

Title of Rule and Other Identifying Information: WAC 16-575-040 Rules for implementation of promotional hosting by the Washington wine commission.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street S.E., Conference Room 205, Olympia, WA 98504-2560, on November 17, 2010, at 1:30 p.m.

Date of Intended Adoption: December 2, 2010.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., November 19, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by November 1, 2010, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules identify those authorized to make expenditures for the Washington wine commission on promotional hosting and the objectives for those expenditures.

Reasons Supporting Proposal: The Washington wine commission is proposing rules on promotional hosting in accordance with RCW 15.04.200.

Statutory Authority for Adoption: RCW 15.04.200, chapters 15.88, 34.05 RCW.

Statute Being Implemented: RCW 15.04.200 and chapter 15.88 RCW.

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

Name of Proponent: Washington wine commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robin Pollard, 1000 Second Avenue, Suite 1700, Seattle, WA 98104, (206) 667-9463.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules relate to the internal operations of the commission and are in accordance with RCW 15.04.200.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington wine commission is not a listed agency under RCW 34.05.328 (5)(a)(i).

October 5, 2010
Robin Pollard
Executive Director

NEW SECTION

WAC 16-575-040 Rules for implementation of promotional hosting by the Washington wine commission. RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. "Promotional hosting" means the hosting of individuals or groups of individuals at meetings, meals, events, tours, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, or in the aid of the marketing, advertising, or sale of Washington state wine or wine grapes.

The rules governing promotional hosting expenditures for the Washington wine commission shall be as follows:

(1) Budget approval. Commission expenditures for agricultural development, trade promotion, and promotional hosting shall be pursuant to specific budget items in the commission's annual budget as approved by the commission and the director.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development, trade promotion, and promotional hosting in accordance with the provisions of these rules:

(a) Commissioners;

(b) Executive director;

(c) Commission staff, as authorized in writing by the executive director.

Individual commissioners shall make promotional hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and shall require the following information:

(a) Name and position (if appropriate) of each person hosted, provided that in a group of ten or more persons, then only the name of the group hosted shall be required;

(b) General purpose of the hosting;

(c) Date of hosting;

(d) Location of the hosting;

(e) To whom payment was or will be made;

(f) Signature of person seeking payment or reimbursement.

(4) The chair of the commission, executive director, and commission staff, as authorized in writing by the executive director, are authorized to approve direct payment or reimbursements submitted in accordance with these rules: Provided, That the chair, executive director, and commission staff are not authorized to approve their own vouchers.

(5) The following persons may be hosted when it is reasonably believed such hosting will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state wine or wine grapes: Provided, That such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business, associations, commissions, and accompanying staff and interpreter(s);

(b) Members of the media and accompanying staff and interpreter(s);

(c) Foreign government officials and accompanying staff and interpreter(s);

(d) Federal, state, or local officials: Provided, That lodging, meals, and transportation will not be provided when such officials may obtain full reimbursement for these expenses from their government employer;

(e) The general public, at meetings or gatherings open to the general public;

(f) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (e) of this subsection are being hosted, will promote agricultural development,

promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state wine or wine grapes;

(g) Spouses, partners, or significant others of the persons listed in (a), (b), (c), (d), and (f) of this subsection when attendance of such spouse, partner, or significant other is customary and expected or will serve to promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state wine or wine grapes.

WSR 10-20-120
WITHDRAWAL OF PROPOSED RULES
LIQUOR CONTROL BOARD
(By the Code Reviser's Office)
[Filed October 5, 2010, 8:29 a.m.]

WAC 314-11-025, proposed by the liquor control board in WSR 10-07-009 appearing in issue 10-07 of the State Register, which was distributed on April 7, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-20-126
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed October 5, 2010, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-120.

Title of Rule and Other Identifying Information: These rules implement school and district accountability provisions of E2SSB 6696 (2010 session) pertaining to the identification of "persistently lowest achieving schools" and "required action districts." They add new sections to chapter 392-501 WAC.

Hearing Location(s): Old Capitol Building, Office of Superintendent of Public Instruction (OSPI), 600 Washington Street, Annex Conference Room, on November 10, 2010, at 4:00 p.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Robert Butts, 600 Washington Street, Olympia, WA 98504, e-mail bob.butts@k12.wa.us, fax (360) 753-6712, by November 10, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by November 8, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 6696 establishes a process for identifying "persistently lowest-achieving" schools and required action districts that are to develop and implement required action plans. The proposed rules will: (1) Adopt federal criteria for identifying persistently lowest-achieving schools, (2) criteria for recommending to the state board of education that a school district be designated a required action district, and (3) establish the criteria for being released as a required action district.

Reasons Supporting Proposal: The proposed rules are necessary to implement the accountability provisions in Part 1, E2SSB 6696.

Statutory Authority for Adoption: Section 113, chapter 235, Laws of 2010.

Statute Being Implemented: RCW 28A.657.020, 28A.657.030, and 28A.657.100.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Bob Butts, OSPI, (360) 725-0420; Implementation: Tonya Middling, OSPI, (253) 593-2083; and Enforcement: Alan Burke, OSPI, (360) 725-6343.

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

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i).

October 5, 2010
Randy Dorn
State Superintendent
of Public Instruction

GENERAL

NEW SECTION

WAC 392-501-707 Authority. The authority for these rules is RCW 28A.657.020, 28A.657.030, and 28A.657.100, which require the superintendent of public instruction to annually identify persistently lowest-achieving schools, to recommend school districts for designation as required action districts to the state board of education, and to make recommendations to the state board of education regarding the release of school districts from being designated as a required action district.

NEW SECTION

WAC 392-501-710 Purpose. The purposes of this chapter are to:

(1) Adopt criteria for identifying persistently lowest-achieving schools;

(2) Establish criteria for recommending to the state board of education school districts for required action; and

(3) Establish exit criteria for districts that receive a required action designation.

PERSISTENTLY LOWEST-ACHIEVING SCHOOLS

NEW SECTION

WAC 392-501-720 Process and criteria for identifying persistently lowest-achieving schools. By December 1,

2010, and annually thereafter, the superintendent of public instruction shall identify persistently lowest-achieving Title I and Title I eligible schools based on the following criteria:

(1) A Title I school that has been identified as being in improvement, corrective action or restructuring in accordance with the 2001 reauthorization of the federal Elementary and Secondary Education Act that:

(a) Is among the lowest-achieving five percent in the all students group in reading and mathematics combined for the past three consecutive years; or

(b) Is a high school that has a weighted-average graduation rate that is less than sixty percent based on the past three years of data.

(2) A secondary school that is eligible for, but does not receive, Title I funds that:

(a) Is among the lowest-achieving five percent of secondary schools in the all students group in reading and mathematics combined for the past three consecutive years; or

(b) Is a high school that has a weighted-average graduation rate that is less than sixty percent based on the past three years of data.

(3) However, the superintendent of public instruction may exclude specific schools from the list based on a case-by-case analysis. The case-by-case analysis shall consider the percentage of overage and under-credited students, whether including the school on the list would be invalid or unreliable due to the small number of students on whom the identification would be based, and on other reasonable contextual conditions that would make it inappropriate for the school to be included on the list.

REQUIRED ACTION SCHOOL DISTRICTS

NEW SECTION

WAC 392-501-730 Process and criteria for recommending to the state board of education school districts for required action. By January 15, 2011, and annually thereafter, the superintendent of public instruction shall recommend to the state board of education school districts for designation as required action districts.

(1) The criteria for recommending designation shall be as follows:

(a) The school district has one or more schools on the persistently lowest-achieving list;

(b) For recommendations in January 2011 only, the school district did not apply for a school improvement grant in the 2009-10 school year application period;

(c) Student achievement in the school or schools on the persistently lowest-achieving list within the school district has improved at a rate less than the state average in reading and mathematics in the most recent past three years for which data are available as measured by state assessment scores;

(d) Schools on the persistently lowest-achieving school list within school districts that are identified in (a) through (c) of this subsection shall be ranked in priority order based on:

(i) The lowest levels of achievement in the all students group in reading and mathematics combined for the past three consecutive years; and

(ii) The schools with the lowest rate of improvement in reading and mathematics combined for the past three years.

(e) Using the priority ranking in (d) of this subsection, the superintendent shall recommend school districts that have a school or schools that have the lowest levels of achievement and lowest rates of improvement. The number of school districts that shall be recommended shall be based on the availability of federal funds and the amount of funding needed for each identified school. For the 2011 recommendations, no more than half of the federal fund appropriation for school improvement grants shall be utilized for required action districts. All other federal funds will be allocated consistent with the federal school improvement guidelines competitive process.

(2) Notwithstanding subsection (1) of this section, school districts that applied for and received a school improvement grant in the 2009-10 school year application period shall not be eligible for being designated as a required action district until recommendations are made to the state board of education in January 2014, unless the school district does not implement a federal intervention model at each school that received a grant.

EXIT CRITERIA

NEW SECTION

WAC 392-501-740 Exit criteria for required action designation. The superintendent of public instruction shall recommend to the state board of education that a school district be released from being designated as a required action district after the district implements a required action plan for a period of three years if:

(1) The district no longer has a school on the persistently lowest-achieving list; and

(2) The school or schools that were on the persistently lowest-achieving list have a positive improvement trend in reading and mathematics on state assessments in the "all students" category based on the most recent three-year average.

WSR 10-20-128
PROPOSED RULES
PARKS AND RECREATION COMMISSION

[Filed October 5, 2010, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-001.

Title of Rule and Other Identifying Information: Chapter 352-32 WAC, Public use of state park areas, including WAC 352-32-010 Definitions, 352-32-030 Camping, 352-32-050 Park periods, 352-32-056 Peace and quiet, 352-32-080 Swimming, 352-32-085 Technical rock climbing, 352-32-125 Fires and campfires, 352-32-210 Consumption of alcohol in state park areas, 352-32-240 Nondiscrimination certification, 352-32-251 Limited income senior citizen, disability, and disabled veteran passes, 352-32-252 Off-season senior citizen pass—Fee, 352-32-260 Sno-park permit, 352-

32-265 Sno-park permit—Display, 352-32-270 Sno-park permit—Fees, and 352-32-310 Penalties.

Chapter 352-37 WAC, Ocean beaches, including WAC 352-37-105 Fires and campfires, 352-37-200 Special group recreation event permit, and 352-37-330 Penalties; and new section WAC 352-37-325 Seashore conservation area closures.

Hearing Location(s): Millersylvania State Park, Environmental Learning Center, 12245 Tilley Road South, Olympia, WA 98512, on November 19, 2010, at 9:00 a.m.

Date of Intended Adoption: November 19, 2010.

Submit Written Comments to: Pamela McConkey, Washington State Parks, P.O. Box 42650, Olympia, WA 98504-2650, e-mail pamm@parks.wa.gov, fax (360) 902-586-6651 [586-6651], by November 1, 2010.

Assistance for Persons with Disabilities: Contact Pauli Larson by November 12, 2010, TTY (360) 664-3133 or (360) 902-8505.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to chapter 352-32 WAC, Public use of state parks areas, would result in multiple changes, adjustments to reflect current business practices and new language within this chapter, summarized as follows:

(1) Expand and clarify the rules governing park times, periods when a park will be open or closed and the use of emergency closures,

(2) Adjust the minimum requirement for pass program eligibility regarding state residency and expanding methods for proof of residency, and

(3) Make minor housekeeping adjustments, definition modifications, and substantive changes relating to the elimination of reciprocity for sno-park permits.

The proposed amendments to chapter 352-37 WAC, Ocean beaches, would result in multiple changes, update of an address, adjustments to reflect current business practices and the creation of a new section regarding park area closures.

Reasons Supporting Proposal: The proposed changes are the result of the agency biennial review of commission rules which govern public use of parks and beaches. The review considers suggestions from park visitors, user groups, and field staff. The proposal clarifies, standardizes and simplifies the language contained in a number of rules in each chapter of WAC. The changes make park rules more understandable to the public, and also give additional tools to State Parks' staff as they protect park resources and park visitors.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, and 79A.05.065.

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

Name of Proponent: Washington state parks, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela McConkey, Washington State Parks, P.O. Box 42650, Olympia, WA 98504-2650, (360) 902-8595; and Enforcement: Robert Ingram, Washington State Parks, P.O. Box 42650, Olympia, WA 98504-2650, (360) 902-8615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These chapters of administrative rule do not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commission, nor has the commission voluntarily applied those requirements.

October 5, 2010
Valeria Evans
Management Analyst
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Aquatic facility" shall mean any structure or area within a state park designated by the director or designee for aquatic activities, including, but not limited to, swimming pools, wading pools, swimming beaches, floats, docks, ramps, piers or underwater parks.

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping party" shall mean an individual or a group of people (two or more persons not to exceed eight) that is organized, equipped and capable of sustaining its own camping activity in a single campsite. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.

"Commercial recreation use" is a recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than state parks or a state park concessionaire.

"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.

"Commercial use (nonrecreation)" is any activity involving commercial or business purpose within a state park that may impact park facilities, park visitors or staff and is compatible with recreational use and stewardship, limited in duration and does not significantly block/alter access or negatively impact recreational users.

"Commission" shall mean the Washington state parks and recreation commission.

"Conference center" shall mean a state park facility designated as such by the director or designee that provides spe-

cialized services, day-use and overnight accommodations available by reservation for organized group activities.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Disrobe" shall mean to undress so as to appear nude.

"Dusk" shall mean one half hour after sunset.

"Emergency area" is an area in the park separate from the designated overnight camping area, which the park manager decides may be used for camping when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELCs), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELCs)" shall mean those specialized facilities, designated by the director or designee, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreational vehicle that will be parked in a designated campsite or parking area for overnight.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbeques and charcoal.

"Fish" shall mean all marine and freshwater fish and shellfish species including all species of aquatic invertebrates.

"Foster family home" means an agency which regularly provides care on a twenty-four-hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed.

"Geocache" shall mean geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called "geocachers") use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Group" shall mean twenty or more people engaged together in an activity.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Hiker/biker campsite" shall mean a campsite that is to be used solely by visitors arriving at the park on foot or bicycle.

"Intimidate" means to engage in conduct that would make a reasonable person fearful.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Out-of-home care" means placement in a foster family home or with a person related to the child under the authority of chapters 13.32A, 13.34, or 74.13 RCW.

"Overflow area" shall mean an area in a park separate from designated overnight and emergency camping areas, designated by the park manager, for camping to accommodate peak camping demands in the geographic region.

"Overnight accommodations" shall mean any facility or site designated for overnight occupancy within a state park area.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Person related to the child" means those persons referred to in RCW 74.15.020 (2)(a)(i) through (vi).

"Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Popular destination park" shall mean any state park designated by the director or designee as a popular destination park because, it is typically occupied to capacity on Friday or Saturday night during the high use season.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that a minimum of twenty persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event,

such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director or designee may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 79A.05.160, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Remote controlled aircraft" shall mean nonpeopled model aircraft that are flown by using internal combustion, electric motors, elastic tubing, or gravity/wind for propulsion. The flight is controlled by a person on the ground using a hand held radio control transmitter.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

(1) Camping at a given park for more than thirty days within a forty-day time period April 1 through September 30; or forty days within a sixty-day time period October 1 through March 31. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping party shall be limited to ten consecutive nights April 1 through September 30. Provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights October 1 through March 31 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

(2) The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Seaweed" shall mean all species of marine algae and flowering sea grasses.

"Sno-park" shall mean any designated winter recreational parking area.

"Special groomed trail area" shall mean those sno-park areas designated by the director as requiring a special groomed trail permit.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation area as defined in RCW 79A.05.605 and as regulated under chapter 352-37 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Vehicle" shall include every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway. For the purposes of this chapter, this definition excludes bicycles, wheelchairs, motorized foot scooters, electric personal assistive mobility devices (EPAMDs), snowmobiles and other nonlicensed vehicles.

"Vehicle parking permit" means the permit issued on a daily, multiple day or annual basis for parking a vehicle in any state park area designated for daytime vehicle parking, excluding designated sno-park parking areas.

"Vessel" shall mean any watercraft used or capable of being used as a means of transportation on the water.

"Walk-in campsite" shall mean a campsite that is accessed only by walking to the site and which may or may not have vehicle parking available near by.

"Watercraft launch" is any developed launch ramp designated for the purpose of placing or retrieving watercraft into or out of the water.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 79A.05.420.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

"Wood debris" shall mean down and dead tree material.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m., if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. Campers may stay ten consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, April 1 through September 30, not to exceed thirty days in a forty-day time period; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, October 1 through March 31, not to exceed forty days in a sixty-day time period. This limitation shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. ((~~The number of vehicles occupying~~)) A campsite shall be limited to one ((~~car and one~~)) recreational vehicle((~~: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant~~)). More than one vehicle may be permitted when in the judgment of the ranger the extra vehicle fits on the designated parking pad and does not result in damage to natural vegetation or park infrastructure. Any extra vehicle that may be permitted at a campsite is subject to an extra vehicle fee. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Overnight camping will be allowed in approved areas within designated sno-parks in Washington state parks, when posted, provided the appropriate required sno-park permit is displayed.

(15) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-050 Park periods. (1) The director or designee shall establish for each state park area, according to existing conditions, times, and periods when it will be open or closed to the public. Such times and periods shall be posted at the entrance to the state park area affected and at the park office. No person shall enter or be present in a state park area after the posted closing time except:

(a) Currently registered campers who are camping in a designated campsite or camping area;

(b) Guests of a currently registered camper who may enter and remain until 10:00 p.m.;

(c) Guests of a state park employee;

(d) Technical rock climbers who bivouac on vertical climbing routes not otherwise closed to public use.

(2) The director or designee may, permanently or for a specified period or periods of time, close any state park area to public access if the director or designee concludes that such a closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. Prior to closing any park or park area to public access, the director or designee shall hold a public meeting in the general area of the park or park area to be closed. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee determines that it is necessary to close an area to public access immediately to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resource, the director or designee may take emergency action to close a park area to public access without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as the imminent and substantial threat exists.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-056 Peace and quiet. To insure peace and quiet for visitors:

(1) No person shall conduct themselves so that park users are disturbed in their sleeping quarters or in campgrounds or park employees in their sleeping quarters between the quiet hours of 10:00 p.m. and 6:30 a.m.

(2) No person shall, at any time, use sound-emitting electronic equipment including electrical speakers, radios, phonographs, televisions, or other such equipment, at a volume which emits sound beyond the person's vehicle or immediate area of use, individual camp or picnic site that may disturb other park users without specific permission of the park ranger.

(3) Engine driven electric generators may be operated only between the hours of 8:00 a.m. and 9:00 p.m.

Except at Crystal Springs and Easton Reload sno-parks, where engine driven electric generators may be operated after 9:00 p.m. during the winter recreation season.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-080 Swimming. (1) Swimming areas in state park areas are marked with buoys, log booms, or other markers, clearly designating the boundaries of such areas.

(2) Any person swimming outside the boundaries of a designated swimming area, or in any area not designated for swimming, or in any area, whether designated for swimming or not, where no lifeguard is present, shall do so at his or her own risk.

(3) All persons using any designated swimming area shall obey all posted beach rules and/or the instructions of lifeguards, rangers, or other state parks employees.

Children twelve years of age or younger, must be accompanied by a responsible adult while using the swim area.

(4) No person shall swim in any designated watercraft launching area.

(5) No person shall give or transmit a false signal or false alarm of drowning in any manner.

(6) Use of ((~~inflated mattresses,~~)) rubber rafts, rubber boats, inner tubes, or other large objects((~~, except~~)) which obstruct the view of the water's surface are prohibited in designated swimming areas. U.S. Coast Guard approved life jackets, ((~~in state park areas~~)) small children's flotation devices or toys and one-person inflatable mattresses for the purpose of buoyancy while swimming or playing in any designated swimming area ((~~is prohibited~~)) are allowed. Concessionaires are not permitted to rent or sell ((~~such~~)) prohibited floating devices within state parks without written approval of the ((~~commission~~)) director or designee.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-085 Technical rock climbing. (1) Whenever used in this section, technical rock climbing shall mean climbing while using such aids as pitons, carabiners or snap links, chalk, ropes, fixed or removable anchors, or other similar equipment. Technical rock climbing includes bouldering and free soloing (respectively low and high elevation climbing without ropes).

(2) Technical rock climbing will be allowed in state parks except it is:

(a) Not permitted in natural area preserves;

(b) Conditioned in heritage areas, natural areas and natural forest areas;

(c) Not permitted where the director or designee has closed the area pursuant to subsection (3) of this section;

(d) Limited in state park areas without climbing management plans pursuant to subsection (6) of this section to the use of routes with established fixed protection, new routes that do not use fixed protection, nor require gardening/cleaning with any type of cleaning tool;

(e) Not permitted in state park areas closed to public use.

(3) The director or designee may, permanently or for a specified period or periods of time, close any state park area to technical rock climbing if the director or designee concludes that a technical rock climbing closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. Prior to closing any park or park area to technical rock climbing, the director or designee shall hold a public meeting in the general area of the park or park area to be closed to technical rock climbing. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee determines that it is necessary to close a rock climbing area immediately to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resource, the director or designee may take emergency action to close a park area to rock climb-

ing without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as ((~~is necessary for the director or designee to comply with the publication and hearing requirements of this subsection~~)) the imminent and substantial threat exists.

(4) The director or designee shall ensure that any park area closed to technical rock climbing pursuant to subsection (3) of this section is conspicuously posted as such at the entrance of said park area. Additionally, the director or designee shall maintain a list of all parks and park areas closed to technical rock climbing pursuant to subsection (3) of this section.

(5) The director or designee shall establish a committee of technical rock climbers, to advise park staff on park management issues related to technical rock climbing for each state park area where deemed necessary by the agency.

(6) Each state park area with an established advisory committee of technical rock climbers will have a climbing management plan which will specify technical rock climbing rules concerning overnight stays on climbing routes, bolting, power drills, stabilization of holds, group size and activities, gardening/cleaning of routes pursuant to chapter 352-28 WAC and RCW 79A.05.165, chalk, special use designations for climbing areas, protection of sensitive park resources, and other such issues required by the director or designee. Climbing management plans that relate to natural forest areas or heritage areas must be approved by the commission. The director or designee shall ensure that any technical rock climbing rules contained in a climbing management plan are conspicuously posted at the entrance of the affected park area.

(7) Bolting will be allowed as specified in climbing management plans.

(8) The use of power drills will be allowed only if the park climbing management plans specifically permit under specified conditions for bolt replacement and bolt installation on new routes. They are otherwise prohibited.

(9) The addition of holds onto the rock face by any means, including gluing, chipping, or bolting is prohibited.

(10) Except as provided in WAC 352-32-310, any violation of this section and rules contained in the park management plan and posted at the park is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-125 Fires and campfires. All fires, except campfires, fires for stoves, candles, torches, barbeques and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

At Crystal Springs and Easton Reload sno-parks all campfires must be restricted to portable fire receptacles not to exceed three feet in diameter and must be at least six inches off the ground, and are only permitted when the sno-parks are open for winter recreation access.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-210 Consumption of alcohol in state park areas. (1) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any state park or state park area is prohibited except in the following designated areas and under the following circumstances in those state parks or state park areas not posted by the director or designee as closed to alcohol pursuant to subsection (4) of this section:

(a) In designated campsites or in other overnight accommodations, by registered occupants or their guests; provided ELC users obtain written permission through state parks application process;

(b) In designated picnic areas, which shall include those sites within state park areas where picnic tables, benches, fireplaces, and/or outdoor kitchens are available, even though not signed as designated picnic areas and public meeting rooms;

(c) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager; and

(d) In any building, facility or park area operated and maintained under a concession agreement, wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(2) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages is prohibited at the following locations:

(a) Dash Point State Park;

(b) Saltwater State Park;

(c) Sacajawea State Park;

(d) Flaming Geyser State Park;

Except in the following designated areas and under the following circumstances:

(i) In designated campsites, or in other overnight accommodations by registered occupants or their guests.

(ii) In any building, facility or park area operated and maintained under a concession agreement wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(iii) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager.

(3) The director or designee may, for a specified period or periods of time, close any state park or state park area to alcohol if the director or designee concludes that an alcohol closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. The director or designee shall consider factors including but not limited to the effect or potential effect of alcohol on public and employee safety, park appearance, atmosphere, and noise levels, conflicts with other park uses or users, the demand for law enforcement, and the demand on agency staff. Prior to closing any park or park area to alcohol, the director or designee shall hold a public hearing in the general area of the park or park area to be closed to alcohol. Prior notice of the meeting shall be published in a newspaper of general circulation in the area. In the event the director or designee determines that an immediate alcohol closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resources, the director or designee may take emergency action to close a park or park area to alcohol without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as ((~~is necessary for the director or designee to comply with the publication and hearing requirements of this subsection~~)) the imminent and substantial threat exists.

(4) The director or designee shall ensure that any park or park area closed to alcohol pursuant to subsection (3) of this section is conspicuously posted as such at the entrance to said park or park area. Additionally, the director or designee shall maintain for public distribution a current list of all parks and park areas closed to alcohol pursuant to subsection (3) of this section.

(5) Dispensing alcoholic beverages from containers larger than two gallons is prohibited in state park areas except when authorized in writing and in advance by the park manager.

(6) The provisions of this rule shall not apply to any part of the Seashore Conservation Area, as designated and established by RCW 79A.05.605.

(7) Opening, consuming, or storing alcoholic beverages in Fort Simcoe State Park and Squaxin Island State Park is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending Order 27, filed 9/23/76)

WAC 352-32-240 Nondiscrimination certification. (1) This is to certify that the Washington state parks and recreation commission is an equal opportunity employer, and that no person in the United States is denied the benefits of full and equal enjoyment of the right of employment or any goods, services, facilities, privileges, advantages, and accommodations of, or on any property administered by the Washington state parks and recreation commission ((~~because of race, creed, color, age, sex, national origin, or physical disability~~)).

(2) The provisions of this certification shall apply to all contractors, lessees, licensees, and concessionaires operating under any legal instrument issued by the Washington state parks and recreation commission, as well as areas operated by the Washington state parks and recreation commission itself.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes. (1)(a) Persons who are senior citizens, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission accompanied by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or a notarized affidavit of income on a form provided by the commission, receive a limited income senior citizen pass at no charge, which entitles the holder's camping party to free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in the campsite fee, or moorage fee as published by state parks. Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.

(b) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria shall be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are:

(a) Permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive a five year disability pass at no charge;

(b) Temporarily disabled and who meet the eligibility requirements of RCW 79A.05.065 and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive a one year disability pass at no charge; and

(c) Residents of Washington who have been issued a card, decal (placard) or special license plate for a permanent disability under RCW 46.16.381 shall be entitled, along with the members of their camping party to free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in the campsite fee, or moorage fee as published by state parks.

(3) Persons who are veterans, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive a lifetime disabled veteran pass at no charge. Pass holders must provide proof of continued residency as determined by the director or designee. The pass entitles the holder's camping party to free use of a state park campsite, trailer dump station, watercraft launch site, moorage facility, and reservation service.

(4) Applications for limited income senior citizen, disability, and disabled veteran passes shall be made on forms prescribed by the commission.

(5) Verification of age shall be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, or driver's license. Verification of residency shall be by original or copy of a Washington state driver's license, voter's registration card, ((~~or~~)) senior citizen property tax exemption, or other proof of continued residency as determined by the director or designee.

(6) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(7) Pass holders that violate or abuse the privileges of their pass, as listed below, may be subject to suspension of their pass and assessed other fees.

(a) Duplicate or multiple reservations for the same night - thirty-day suspension.

(b) Use of pass by unauthorized person - sixty-day suspension and/or a fee equal to two times the campsite fee.

(c) Two or more no-shows (failure to use or cancel reservation) for reservations between May 1 and November 1 - ninety-day suspension.

(d) Repeated park rule violations - minimum ninety-day suspension.

The pass will be confiscated by the ranger on duty or their designee and sent to the Olympia headquarters office. At the end of the suspension the pass will be returned to the authorized pass holder at no cost.

(8) Pass holders may appeal a suspension of their pass by providing written justification/explanation to the state parks director or designee at P.O. Box 42650, Olympia, WA 98504.

(9) Pass holder discounts shall apply only to those fees listed in subsections (1), (2), and (3) of this section. Pass holder discounts will not apply to all other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(10) If the conditions of a pass holder change or the pass holder changes residency to a place outside Washington state during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 79A.05.065 and WAC 352-32-251, the pass becomes invalid, and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

(11) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-252 Off-season senior citizen pass—Fee. (1) Persons who are senior citizens, are at least sixty-two years of age, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive an off-season senior citizen pass which entitles the holder's camping party to camp at any camping areas made available by the commission, as well as use of agency mooring facilities, at no cost beyond the charges provided for in subsection (3) of this section, effective October 1 through March 31, and Sunday through Thursday nights in April as determined by the director and posted. Each such pass shall be valid only during one off-season period.

(2) Applications for off-season senior citizen passes shall be made on forms prescribed by the commission and shall be accepted only after August 1 for the following off-season period.

(3) There shall be a fee for each off-season senior citizen pass. Limited income senior citizen pass holders may purchase the off-season pass at a 50 percent discount. A surcharge equal to the fee for an electrical hookup published by state parks shall be assessed for each night an off-season senior citizen pass holder uses a campsite with an electrical hookup.

(4) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(5) Pass holder discounts shall apply only to those fees in subsections (1) and (3) of this section. Pass holder discounts will not apply to other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(6) If a pass holder changes residency to a place outside Washington state during the time period when a pass is valid, the pass becomes invalid and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-32-260 Sno-park permit—Display. Only those vehicles properly displaying a valid winter recreational area parking permit issued by the state of Washington ((~~or by another state or nation which honors a Washington state winter recreational area parking permit~~)) shall park in designated winter recreational parking areas((~~: Provided, That Washington licensed vehicles shall be required to display a Washington state winter recreational area parking permit~~)). Permits shall be displayed near the lower left corner and on the inside of the windshield of the vehicle when the vehicle is parked in a designated winter recreational parking area. Those vehicles in violation of this rule shall be subject to the application of RCW 46.61.587. Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 97-21-133, filed 10/21/97, effective 1/1/98)

WAC 352-32-270 Sno-park permit—Fees. Fees for the winter recreational area parking permits will be established by the commission and shall be published by state parks. These permits include:

(1) Seasonal permit - ((~~commences October 1 and expires May 1~~)) valid December 1 through April 30 of the winter season for which it is issued.

(2) One day permit - ((~~commences on~~)) valid for the date identified on the permit in the space provided ((~~and expires on that same date~~)).

(3) Special groomed trail permit - the director may designate certain sno-parks as requiring a special groomed trail permit. In making this designation the director may consider the following factors:

The facilities and services available;

The demand for facilities and services; user days; and

Such other considerations as the director deems appropriate.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

WAC 352-32-310 Penalties. Any violation designated in this chapter as a civil infraction ((~~shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court~~)) pursuant to chapter 7.84 RCW, will be treated as infractions regardless of whether they appear in the IRLJ 6.2 penalty schedule, except that a violation of WAC ((~~352-32-220, 352-32-260, and 352-32-265 shall at all times constitute a civil infraction, and WAC~~)) 352-32-120 shall at all times be a gross misdemeanor.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-32-265	Sno-park permit—Display.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-37-105 Fires and campfires. ((~~All fires, except campfires, fires for stoves, candles, torches, barbeques and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet.~~)) On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-37-200 Special group recreation event permit. (1) Any person or group desiring to make use of a portion of the ocean beaches for a group recreation event which will require the closure of the area to certain conflicting recreational uses, may apply to the director for a special group recreation event permit. The director, or designee, may issue such a permit after consultation with the appropriate local government, if the event does not unduly interfere with normal public recreation. Such authorization shall include the closure of the specified area to recreational activities, including motor vehicle traffic, which are determined to have the potential to interfere with the event or which could risk the safety of the recreating public or the special event participants. However, no such authorization may result in the unreasonable exclusion of pedestrian recreationists from the specified portion of the ocean beach; all events authorized under this permit shall be open to public participation and/or observation.

(2) In determining whether to issue the permit, the director or designee will review the proposal for consistency with established approval criteria developed by the agency, which are designed to ensure the appropriateness of the event to the ocean beaches, and the basis for any associated public recreation restrictions. The criteria are available upon request from the agency.

(3) A special group recreation event permit shall be issued only for recreational events where there is a reasonable expectation that a minimum of twenty persons will participate. The event must be oriented towards a recreational pursuit. Not more than three permits will be issued to a given applicant for the same event during a one-year period. The group recreation activity must be consistent with the seashore conservation area (RCW 79A.05.600 through 79A.05.630), and may include an activity otherwise excluded under this chapter. Special group recreation events shall not exceed three days or seventy-two hours.

(4) Persons or organizations that desire to conduct a special group recreation event on the ocean beaches shall submit a permit application provided by the director and appropriate fees to the:

Washington State Parks and
Recreation Commission
((~~7150 Cleanwater Drive~~))
P.O. Box 42650
Olympia, WA 98504-2650

Such application shall be submitted at least fifteen days in advance of the proposed date of the event, to allow for necessary internal review and analysis, consultation with local governments, public notice, establishment of permit conditions, and required agency preparations and coordination. The director or designee shall approve or disapprove a permit application and establish the conditions for an approved application. The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or designee shall determine the need for any fees necessary to cover costs incurred by the agency, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the character of the event. Any such fees, bond, damage deposit, or liability insurance shall be provided prior to the issuance of the permit.

(5) If additional costs are incurred by the commission resulting from the event, the applicant shall reimburse the commission for such costs in a timely manner. If the additional costs are not paid, the director or designee may recover such costs from the bond or damage deposits provided if previously required. Any funds remaining from the bond or damage deposit shall be returned to the applicant.

NEW SECTION

WAC 352-37-325 Seashore conservation area closures. The director or designee may, permanently or for a specified period or periods of time, close any portion of the seashore conservation area to public access if the director or designee concludes that such a closure is necessary for the protection of the health, safety and welfare of the public, visitors or staff, or ocean beach resources. Prior to closing any portion of the seashore conservation area to public access, the director or designee shall hold a public meeting in the general area of the seashore conservation area to be closed. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at local ocean beach accesses at least thirty days prior to the closure. In the event that the director or designee determines that it is necessary to close an area to public access immediately to protect against an imminent and substantial threat to the health, safety and welfare of the public, visitors or staff, or ocean beach resource, the director or designee may take emergency action to close a portion of the seashore conservation area to public access without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as the imminent and substantial threat exists.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-37-330 Penalties. Any violation designated in this chapter as a civil infraction ((~~shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court~~)) pursuant to chapter 7.84 RCW, will be treated as infractions regardless of whether they appear in the IRLJ 6.2 penalty schedule, except that a violation of WAC 352-37-230 shall at all times be a gross misdemeanor.

WSR 10-20-130
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed October 5, 2010, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-090.

Title of Rule and Other Identifying Information: Chapter 204-50 WAC, Ignition interlock breath alcohol devices.

Hearing Location(s): Washington State Patrol, Seattle Crime Laboratory, Large Conference Room, 2203 Airport Way South, Suite 250, Seattle, WA 98134-2028, on November 12, 2010, at 9:00 a.m.

Date of Intended Adoption: November 12, 2010.

Submit Written Comments to: Trooper Steve Luce, 811 East Roanoke Street, Seattle, WA 98100, e-mail steve.luce@wsp.wa.gov, fax (206) 720-3023, by November 10, 2010.

Assistance for Persons with Disabilities: Contact Trooper Steve Luce by November 10, 2010, (206) 720-3018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating chapter 204-50 WAC to include but not limited to certification of ignition interlock service centers, ignition interlock technicians, and updating calibration procedures of ignition interlock devices (IID).

Changes will also provide clarifying language and clean up to existing language.

Reasons Supporting Proposal: Provides updates and clarification to the language.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, and 46.04.215.

Statute Being Implemented: RCW 43.43.395.

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

Name of Agency Personnel Responsible for Drafting: Trooper Steve Luce, 811 East Roanoke Street, Seattle, WA 98100, (206) 720-3018; Implementation and Enforcement: Impaired Driving Section, 811 East Roanoke Street, Seattle, WA 98100, (206) 720-3018.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state patrol impaired driving section (IDS) is proposing amendments to chapter 204-50 WAC, Breath alcohol ignition interlock devices.

The purpose of this chapter is to outline the rules pertaining to all aspects of breath alcohol IIDs under chapter 204-50 WAC. Below is a summary of some of the changes being proposed to this chapter:

- WAC 204-50-030 - updates to definitions section which includes but is not limited to the removal of some definitions as well as adding new definitions for ignition interlock technician, letter of certification, and vendor.
- WAC 204-50-040 - revising language pertaining to the certification process of IIDs which includes, but is not limited to, the following requirements:

(a) Testimony provided by entities of the interlock community will be provided at no cost to the state of Washington.

(b) Provides the alcohol reference value and type of calibration device used.

(c) Provide the Washington state software IID configuration profile.

(d) IID manufacturers will provide all information to the IDS in an electronic format acceptable to the IDS.

- New section WAC 204-50-042 - adds a new section requiring all service centers to be certified by the IDS. The proposed language in this section includes but is not limited to the following requirements:

(a) A designated waiting area must be provided.

(b) Fixed site service centers must comply with all municipal and/or county zoning regulations for commercial business.

(c) A facility which accommodates all functions of IID installation and service.

- New section WAC 204-50-046 - adds new section requiring all ignition interlock technicians to be certified by IDS, to include but not [be] limited to the following:

(a) Knowledge and skill examination.

(b) Provide a criminal history - any alcohol related traffic offenses or felony convictions within the last five years will result in disqualification.

- WAC 204-50-080 - makes changes to the requirements for calibration of the IID to include but not [be] limited to:

(a) Alcohol reference value at calibration shall be between .030 and .050 g/210L.

(b) Wet bath simulators must be found on the NHTSA conforming products list.

(c) Alcohol solution reference value must be traceable to NIST.

(d) Dry gas standards must be adjusted due to changes in elevation.

Also includes changes to the mail-in program for interlock devices, which include but are not limited to:

(a) The IID must be serviced at a fixed site service center every six months and during the last four months of a client's interlock requirement.

(b) Disqualification from program if client shows a BrAC of .040 or more has a violation reset condition.

- WAC 204-50-090 - changes include but are not limited to adding new language which outlines that changes in the IID software and anticircumvention configuration will only be administered by the manufacturer or vendor.
- New section WAC 204-50-100 - adds new language to provide requirements of IID installation.
- WAC 204-50-110 - provides updates [to] the mandatory IID operational features which include but are not limited to:

(a) Restart not permitted during a violation reset condition.

(b) Minimum of 1500 ml or 1.5 liters of breath for an acceptable breath sample.

(c) Ample supply of mouth pieces defined as up to two mouth pieces every sixty days.

(d) Enter into a violation reset after a client has three attempted starts over .025 BrAC.

(e) Random retest must be conducted ranging from ten - forty-five minutes after previous test.

(f) An IID in violation reset must [be] serviced at a mobile or fixed site service center.

(g) A violation reset will be uniquely identified in the IID's data base and will not be the same indication as a malfunction of the IID.

- WAC 204-50-120 - updates to other provisions section will include but are not limited to:

(a) Mobile service centers may provide service to rural areas with approval from IDS.

(b) No cost to the client for billing or invoicing.

(c) Proof of insurance must be provided to IDS annually.

- WAC 204-50-130 - updates include but are not limited to adding removal procedures to include a requirement that authorization for IID removal must be in compliance with RCW 46.61.5055(4) and is to be determined by the vendor.
- New section WAC 204-50-140 - new language is added to outline requirements for lessee orientation and support.
- New section WAC 204-50-150 - process of suspension, renewal, denial and revocation of certifications defined.
- New section WAC 204-50-160 - hearing procedures are outlined.
- New section WAC 204-50-170 - process of appeal is defined.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

The IDS has analyzed the proposed rule amendments and has determined that small businesses may be impacted by these changes, with some costs that may [be] considered "more than minor" and disproportionate to some small businesses that provide certified IIDs.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), IDS has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), IDS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

INDUSTRY ANALYSIS: In accordance with SHB 2466 (chapter 268, Laws of 2010), the state patrol IDS is responsible for providing standards for the certification, installation, repair, maintenance, monitoring, inspection and removal of IIDs. As part of its monitoring, IDS keeps a current data base that identifies all certified IIDs. Since internal industry information can be obtained at a more accurate level than is required by chapter 19.85 RCW, it is unnecessary to conduct an industry analysis using the four-digit standard industrial classification (SIC) codes.

IDS has determined that there are ten providers (public, private and for-profit) that meet the criteria for small businesses under RCW 19.85.020.

INVOLVEMENT OF SMALL BUSINESSES: All ten ignition interlock providers have been provided with the proposed language and a small business impact survey so that they have an opportunity to be involved in writing the proposed rules and in ascertaining the costs associated with proposed rule changes. Of the ten ignition interlock providers, six responded to our inquiry (a sixty percent response rate). It is also of note that the responses included providers using four of the six certified IIDs used in Washington state. The responses to the survey are summarized below to showing [show] the impact according to these businesses.

In addition, all six of the certified ignition interlock manufacturers were provided with a small business impact survey even though they did not qualify under RCW 19.85.020 as a small business. The intent was to gain input from [the] entire

ignition interlock community on the proposed rule revisions. None of the six certified manufacturers responded to the survey.

According to the survey provided to the ten interlock providers and six manufacturers, four of the six providers who responded indicated that they would be impacted by the proposed rule changes.

COST OF COMPLIANCE:

Cost of Outcomes Evaluations: According to the small business impact survey responses, companies provided a breakout of the portions of the proposal that would impact their business. A breakout of these issues and associated costs are outlined below:

MANUFACTURER COSTS: Please note that no manufacturers responded with an impact to their business as of the date of this document. However, according to some of the responses received from the providers (service centers), there was indication that they may be impacted since they purchased their devices from the manufacturer and may need to pay for any upgrades to the equipment. Therefore, IDS has given a range of costs as outlined in the responses provided in the survey. There are no anticipated costs to the providers after they are brought into compliance; therefore the costs outlined are only for one year.

Subject	Costs per Year*	First Year	Subsequent Years
*Reprogramming devices	$34,000 - $69,000 (companies indicated having between 115-230 units apiece at a cost of $300 each for repairs)	Yes	No

* The burden of reprogramming devices was indicated by three of the six survey providers. These three providers own the same type of devices. There has been an estimate by all three of these providers of a $300 per device programming cost. It was stated in one survey that the $300 was a fee charged to the provider by the manufacturer for a repair. It was also indicated in one survey that this cost was undetermined at this time. The manufacturer of this device has not provided a cost evaluation for this programming change which would be required of the manufacturer to maintain certification of their device.

Note: There was also an indication that there would be additional cost associated with the testing of the devices following the reprogramming at an ISO accredited lab. However, the cost associated with this was not included in this statement, as the requirement for testing at an ISO accredited laboratory is outlined in the Revised Code of Washington.

ADDITIONAL EQUIPMENT COST:

Subject	Costs per Year*	First Year	Subsequent Years
Additional mouth pieces	$3,060 - $6,210 (twelve mouth pieces for each client at a cost of $3 each) (companies responding currently have 85-120 clients)	Yes	Yes
Replacement stock of dry gas	$7,000 (twenty tanks at a cost of $350 each)	Yes	No
*Additional machines for calibration	$1,200 each	Yes	No

Note: One company indicated that the cost associated with the additional mouth pieces would be passed on to their customers. If all companies pass the cost on to the customers, the associated impact would be $0.

* There is an indication by one company that they would have to purchase additional machines for the calibration rule (WAC 204-50-110 (10)(b)). The proposal only requires the device already installed in a vehicle to be recalibrated and downloaded. The only time a machine needs to be replaced is when the machine is found to be defective. It is believed that rather than decreasing revenue, this change would potentially increase revenue for the companies as there would potentially be more violation reset conditions requiring the offender to have the device reset which the company could charge for.

OTHER BUSINESS COSTS:

Subject	Costs per Year*	First Year	Subsequent Years
Certified technician background check	$10 each employee	Yes	Yes
Orientation and support for the lessee regarding use of the product	$21,250 (training manual; client contracts, shop contracts, labels)	Yes	Yes
*Reprogramming systems	$44,900 first year, and $35,000 for each subsequent year (sixty hours at $165/hour = 9,900 and 35,000 for full-time tech to administrate the program)	Yes	Yes

* One survey indicated that there would be additional costs associated with reprogramming systems to ensure they could communicate with the programming changes made by the manufacturer. In addition, they would have a need for a full-time technician to ensure that their system could process the data correctly and report it to the various jurisdictions.

Note: Two surveys indicated that there will also be costs associated with employee training and certification. All technicians are currently required to be trained in all aspects relating to IIDs. The proposed language would require that anyone applying for ignition interlock certification pass a skills examination administered by the IDS. The IDS will not be charging to administer this examination.

Disproportionate Economic Impact Analysis: When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and ten percent of the largest businesses. The costs identified with outcomes evaluations for

small businesses would be considered by IDS to be "more than minor."

IDS looked at the possible disproportionate impact of this requirement on small businesses, as compared to ten percent of the largest businesses. However, these largest businesses are not impacted by the proposed changes according to the survey. Consequently, it is not possible to accurately delineate and compare costs between small businesses and ten percent of the largest businesses. In its desire to be fair to small businesses and to meet the intent of the law, however, IDS has outlined ways to mitigate expenses for small businesses in meeting the new requirement.

Mitigating Expenses for Outcomes Evaluations: The initial proposed rule that companies reviewed and provided their small business impact survey based upon has been amended to mitigate some of the expenses which were originally outlined in the survey. These changes are as follows:

- Revision to require that a fixed site service center to comply with all municipal and/or county zoning regulations for commercial businesses. Any commercial business should already be working under these zoning requirements, thus not be impacted by the requirement. Therefore the initial cost associated with relocation of a business based on the initial language that restricts the business from being located at a residence is not included in the above impact.
- The WAC revision will not become effective until January 1, 2011, providing companies with six months from initial review to phase in new components. For example, this would allow for the replacement of existing stock of dry gas that may not use the new alcohol reference value change in the range proposed (.030 - .050).
- WAC 204-50-110(8) will not become effective until January 1, 2012, to provide a year after adoption for the manufacturer to reprogram devices (if necessary) to enter into a violation reset condition if the operator attempts to start the vehicle three times within a fifteen minute period with BrAC higher than .025 or concentration prescribed by the originating court.
- Verification of insurance will only need to be made once a year, prior to the expiration date listed on the current valid issuance on file with the IDS.

Summary of Benefits: The proposed rule changes will bring credibility and integrity to the ignition interlock program. With no direct oversite of the ignition interlock program for over twenty years there was a lack of confidence in the program from judges, courts, department of licensing, probation departments, treatment centers and the citizens of Washington state. These revisions will restore confidence in the program and give a solid foundation to the best first offense ignition interlock laws in the nation. These revisions will increase the safety of the thousands of citizens that travel on the public roadways in the state of Washington every day.

JOBS CREATED OR LOST: The proposed regulations require IIDs to be programmed with a new configuration profile, which controls how the device functions. Five of the six certified IIDs certified in Washington function on a Windows based program which is easily programmed. One device works on a DOS based program and is not easily programmed. The manufacturer is silent on whether reprogramming DOS based devices would be an issue.

There are currently five small businesses that use the same DOS based device in the state. Three of those businesses have indicated that the device programming revisions would cause there [their] device to become decertified therefore putting them out of business. The following are the total jobs lost and revenue from those three surveys if in fact the manufacturer cannot reprogram those devices:

- Seven employees.
- Annual combined payroll - $120,400.
- Annual combined revenue - $272,600.
- Loss of equipment - $261,000.

CONCLUSION: IDS has given careful consideration to the impact on small businesses of proposed rules in chapter 204-50 WAC, Breath alcohol ignition interlock devices. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, IDS has analyzed impacts on small businesses and outlined the reasons for the costs and ways that cost[s] are being mitigated.

Please contact Trooper Steve Luce if you have any questions at (206) 720-3018.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4018, e-mail wsprules@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4018, e-mail wsprules@wsp.wa.gov.

September 16, 2010
John R. Bastiste
Chief

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-010 Authority. This chapter is promulgated pursuant to RCW 43.43.395, 46.37.005 and 46.04.215.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-020 Purpose. The purpose of this chapter is to establish guidelines for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock ((~~breath alcohol~~)) devices, as required by RCW 46.04.215 and 43.43.395.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-030 Definitions. The following definitions will apply throughout this chapter:

Alcohol - Means the unique chemical compound ethyl alcohol. For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.

((~~Authorized service provider (ASP) - The person or company meeting all qualifications outlined throughout this chapter and approved and trained by the manufacturer to service, install, monitor, calibrate, and provide information on manufacturer's devices currently certified for use in Washington state.~~))

Bogus sample - Any air sample that is altered, diluted, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with ((~~a~~)) an ignition interlock device.

Breath ((~~or blood~~)) alcohol concentration (((~~BAC~~))) BrAC - Is the amount of alcohol in a person's ((~~blood or~~)) breath determined by chemical analysis, which shall be measured by grams of alcohol per((~~:~~

(~~a) 100 milliliters of blood; or~~

(~~b~~))) 210 liters of breath.

Certification - The testing and approval process required by RCW 46.04.215, 43.43.395 and chapter 204-50 WAC.

Chief - The chief of the Washington state patrol or his or her designee.

Circumvention - Means the attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to, the operation of a vehicle without a properly functioning ignition interlock device, the push start of a vehicle with the ignition interlock device, disconnection or alteration of the ignition interlock device, the introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle, introduction of an intentionally contaminated or altered breath sample, continued operation of the interlock vehicle after the ignition interlock device detects excess breath alcohol.

Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the ignition interlock device.

((~~Device - An ignition interlock breath alcohol device (IID).~~))

DOL - The department of licensing of the state of Washington.

Fail level - The ((~~BAC~~)) BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below, or must shut off the vehicle, to avoid registering a violation reset.

Ignition interlock device (((~~IID~~))) - An electronic device that is installed in a vehicle which requires submitting to a ((~~BAC~~)) BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a ((~~BAC~~)) BrAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a ((~~BAC~~)) BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.

Ignition interlock technician - A person employed by the ignition interlock device manufacturer or vendor and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.

Impaired driving section (((~~IDS~~))) - The ((~~impaired driving~~)) section of the Washington state patrol that has been designated by the chief of the Washington state patrol to coordinate and regulate ignition interlock devices.

Lessee - A person who has entered into an agreement with a manufacturer, vendor, or ((~~authorized~~)) service ((~~provider~~)) center to lease ((~~a~~)) an ignition interlock device.

Letter of certification - Means a letter issued by the Washington state patrol that authorizes a manufacturer's ignition interlock device to be used as an ignition interlock device under this chapter; or an ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or a service center location to service, install, monitor, and calibrate ignition interlock devices currently certified for use in Washington state.

Lockout - A period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.

Manufacturer - The person, company, or corporation who produces the ignition interlock device, and certifies to ((~~IDS~~)) the impaired driving section that a service ((~~provider~~)) center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate, remove, and provide information on the manufacturer's ignition interlock device((~~s~~)).

OAC - Office of the administrator of the court.

Patrol - The Washington state patrol as defined in RCW 43.43.010.

Restricted operator - A person whose driving privileges are restricted by court order or the department of licensing to operating only motor vehicles equipped with an approved, functioning ((~~ID~~)) ignition interlock device.

((~~Simulator - A device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.~~)) Service center - A location certified by the impaired driving section to service, install, monitor, remove and calibrate certified ignition interlock devices in Washington state.

Tampering - Any act or attempt to disable or circumvent the legal operation of an ((~~ID~~)) ignition interlock device.

Vendor - An impaired driving section approved company, business, or distributor who is contracted to manage service centers and/or technicians.

Violation reset - ((~~The condition caused by the failure of the operator of a vehicle to perform a test or retest as required, or by the operator's inability to achieve such test or retest results at the lower of the maximum allowable alcohol concentration as set by the originating court or .025 BAC, the device and the vehicle in which it is installed must be returned to the manufacturer or authorized service provider to be reset~~)) An unscheduled service of the ignition interlock device and required download of the ignition interlock device's data storage system by a service center because the restricted operator has recorded a fail level or a restricted operator failed to have the ignition interlock device serviced within the time period described in this chapter.

Wet bath simulator - A device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-040 ((~~Testing certification, revocation or surrender of certification and recertification.~~)) Ignition interlock device certification. (1) ((~~**Testing and certification.**~~

~~(a) To be certified, a device must:~~

~~(i) Meet all standards set under chapter 204-50 WAC;~~

~~(ii) Meet or exceed the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement, from a laboratory capable of performing the tests specified, will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the following sentence:~~

~~Two samples of _(model name)_, manufactured by _(manufacturer)_ were tested by _(laboratory)_. They do meet or exceed all specifications listed in the Federal Register, Volume 57, Number 67, pages 11774 - 11787.~~

~~Signed_____~~

~~(iii) Submit two devices to the IDS for testing and review.~~

~~(b) Upon receipt of a statement from a testing laboratory that two samples of a device have successfully passed the test procedures listed in this chapter, and confirmation that all other requirements of this chapter have been met, the chief or designee may issue a letter of certification for the device.~~

~~(2) **Revocation or surrender of certification.**~~

~~(a) The letter of certification will be subject to review by the IDS on an annual basis. It will be valid for three years or until voluntarily surrendered by the manufacturer or until revoked by the chief or designee for cause. Reasons for revocation include but are not limited to:~~

~~(i) Evidence of repeated device failures due to gross defects in design, materials, and/or workmanship during manufacture, installation, monitoring, or calibration of the device such that the standards for accuracy and reliability of the devices for which the devices were tested are not being met (as determined by IDS);~~

~~(ii) Evidence that the features and functionality of a manufacturer's devices are not being programmed properly by ASP(s) or are being circumvented by lessees such that the standards for anticircumvention for which the devices were tested are not being met;~~

~~(iii) Any violation on the part of the manufacturer(s) or ASP(s) of any of the laws or regulations related to the installation, servicing, monitoring, and calibration of devices, including, but not limited to, "other provisions" listed in WAC 204-50-120;~~

~~(iv) Notice of cancellation of manufacturer's and/or ASP's required liability insurance is received;~~

~~(v) Notification that the manufacturer is no longer in business. This notification must be made immediately to the IDS;~~

~~(vi) Notification that material modification or alteration in the components and/or the design of the certified device is not provided or the recertification process is not completed as outlined in WAC 204-50-050.~~

~~(b) Unless necessary for the immediate good and welfare of the public, revocation will be effective thirty days from the date of the letter sent to the manufacturer via certified mail, return receipt requested. A copy of each notice of revocation will be provided to the director of the DOL and to the OAC for the state of Washington. The manufacturer's device(s) will be removed from the list of certified devices on the WSP web site.~~

~~(c) Upon voluntary surrender, or revocation of a letter of certification for a manufacturer's device, all like devices must be removed and replaced by a certified device, within sixty-five days of the effective date of such surrender or revocation. The ASP must notify all affected lessees of decertification and the requirements for a new device to be installed by an existing ASP.~~

~~(d) The IDS will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the period of time as outlined in the WSP records retention schedule.~~

~~(3) **Review for recertification.**~~

~~A manufacturer whose letter of certification has been revoked may request a review of revocation by submitting the request in writing to the chief or designee within thirty days from the date on the revocation letter. The request must be made in writing and mailed to WSP Impaired Driving Section, 811 East Roanoke St., Seattle, WA 98102.~~)) An application must be approved and letter of certification issued by the chief or designee before a manufacturer's ignition interlock device is authorized for installation pursuant to this chapter.

(2) **Application for letter of certification for an ignition interlock device.**

(a) A manufacturer must submit an application to the impaired driving section for a letter of certification for its ignition interlock device.

(b) In order to have an ignition interlock device certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section.

(ii) Provide written verification that the ignition interlock device complies with all applicable standards set under RCW 43.43.395 and chapter 204-50 WAC, including written documentation from an International Organization of Standardization (ISO) certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (3)(b)(i), from a laboratory that is certified by the International Organization of

Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(iii) Provide two ignition interlock devices for testing and review.

(iv) Attach to the application a declaration on the form provided by the impaired driving section that:

(A) The manufacturer, and its employees will cooperate with the impaired driving section at all times, including its inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of ignition interlock device.

(B) The manufacturer agrees to provide all downloaded ignition interlock device data, reports and information related to the ignition interlock device to the impaired driving section in an impaired driving section approved electronic format.

(C) The manufacturer, vendor, and/or ignition interlock technician agrees to provide testimony relating to any aspect of the installation, service, repair, calibration, use, removal or performance of the ignition interlock at no cost on behalf of the state of Washington or any other political subdivision.

(v) Provide the alcohol reference value and type of calibration device used to check the ignition interlock device.

(vi) Provide the Washington state software ignition interlock device configuration profile.

(vii) Provide the impaired driving section, a map of the state of Washington showing the area covered by each certified fixed site and/or mobile service center, areas and the name, address, certification number and telephone number of each service center.

(3) **Issuance of a letter of certification for an ignition interlock device or renewal of letter of certification for an ignition interlock device.**

(a) The chief or designee shall have the authority to issue a letter of certification for a device if all the requirements have been met by the applicant.

(b) Upon receipt of an application for letter of certification, the chief or designee shall:

(i) Approve an application under this section if all requirements of this section have been met; or

(ii) Deny the application if all requirements of this chapter have not been met by the applicant. If an applicant is denied, the applicant must wait ninety days before the applicant may resubmit its application for letter of certification for an ignition interlock device.

(c) The chief or designee will notify the applicant in writing if an application for a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(d) A letter of certification for an ignition interlock device will be effective the date stated on the letter.

(e) A letter of certification for an ignition interlock device will be valid for three years or until it is surrendered, suspended, or revoked.

(f) A letter of certification for an ignition interlock device will be subject to review by the impaired driving section at its discretion during the course of the certification period.

(4) **Renewal of a letter of certification for an ignition interlock device.**

(a) A manufacturer must submit an application to the impaired driving section requesting a renewal of a letter of certification for an ignition interlock device. The renewal request may be submitted ninety days prior to the expiration of a letter of certification, but a renewal request must be submitted within thirty days prior to the expiration of a letter of certification.

(b) For a manufacturer to have its letter of certification for an ignition interlock device renewed, it must submit:

(i) A written request for renewal of a letter of certification for an ignition interlock device.

(ii) Written verification that the ignition interlock device complies with all applicable standards set in RCW 43.43.395 and chapter 204-50 WAC, including a current report from an ISO certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (3)(b)(i), from a laboratory that is certified by the International Organization of Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(c) The chief or designee will notify the manufacturer in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certified holder via certified mail, return receipt requested.

(5) **Revocation of a letter of certification for an ignition interlock device.**

(a) The chief or designee may revoke a letter of certification for an ignition interlock device for a manufacturer's, vendor's, service center's or ignition interlock technician's violation of any of the laws or regulations related to the installation, servicing, monitoring, removal and calibration of ignition interlock devices, including but not limited to, "additional requirements" listed in WAC 204-50-120.

(b) A copy of a notice of revocation for a certification for an ignition interlock device will be provided to the DOL and to the OAC for the state of Washington.

(c) Upon revocation of a letter of certification for an ignition interlock device, the manufacturer's ignition interlock device(s) will be removed from the list of certified ignition interlock devices on the patrol's web site.

(d) If a manufacturer holding a letter of certification for an ignition interlock device is no longer in business, it shall immediately send written notification to the impaired driving section informing it that the manufacturer is no longer in business, and the impaired driving section will revoke its letter of certification.

(e) If a manufacturer holding a letter of certification wishes to voluntarily relinquish its letter of certification, the manufacturer shall send written notice to the impaired driving section advising it that the manufacturer is relinquishing its letter of certification for an ignition interlock device.

(f) Upon voluntary surrender or revocation of a letter of certification for a manufacturer's ignition interlock device,

the impaired driving section shall notify all vendors and/or service centers that all of a manufacturer's uncertified ignition interlock devices must be removed and replaced by a certified ignition interlock device within sixty-five days of the effective date of such surrender or revocation. The service center shall notify all affected lessees of the revocation of the manufacturer's certification and requirement that a certified service center install and/or replace the ignition interlock device.

(g) The impaired driving section will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the time period required by the patrol records retention schedule.

(h) The chief or designee will notify the manufacturer in writing if a letter of certification has been revoked. The notice of revocation will be sent to the certificate holder via certified mail, return receipt requested.

(6) All ignition interlock devices must employ fuel cell technology on or before June 10, 2015. An ignition interlock device that does not employ fuel cell technology after June 10, 2015, will not be an approved device in Washington state and will have its letter of certification denied or revoked.

NEW SECTION

WAC 204-50-042 Service center certification and inspection. (1) An application must be approved and letter of certification issued by the chief or designee before a fixed or mobile service center may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) **Application for certification for a fixed site service center.**

(a) A manufacturer or vendor must submit an application to the impaired driving section for a letter of certification for a fixed service center.

(b) In order to have a fixed service center certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section. In the application form the applicant shall disclose:

(A) The physical address of the service center;

(B) The days and hours of operation for the service center;

(C) The type of the certified ignition interlock device it will service;

(D) The type of calibration device it will use for the ignition interlock device(s) it will service.

(ii) Submit a copy of the ignition interlock device data reader download procedures.

(iii) Submit a written statement from a manufacturer that authorizes the service center to install the manufacturer's certified ignition interlock device.

(iv) Submit a list of all fees that may be charged to the lessee to install the manufacturer's certified ignition interlock device.

(3) **Application for certification for a mobile site service center.**

(a) A manufacturer or vendor must submit an application to the impaired driving section for a letter of certification for a mobile service center.

(b) In order to have a mobile service center certified, the applicant(s) must:

(i) Submit the information required in subsection (1)(b)(i) through (iii) of this section.

(ii) Submit a copy of liability insurance for the vehicle to be used as the mobile service center.

(iii) Submit certification number(s) of the fixed site service center(s) overseeing the mobile service center and the technician(s) that will work from the mobile service center(s).

(iv) Submit a list of all fees or rates that may be charged to a lessee to install, remove, repair, or service an ignition interlock device by a mobile service center.

(4) **Inspection of fixed and/or mobile service center.** A vendor or manufacturer must agree to allow access for a representative from the impaired driving section to conduct an inspection at any time during scheduled business hours to ensure compliance as required in chapter 204-50 WAC.

(5) **Service center requirements.** To receive and maintain a letter of certification, a fixed site service center must:

(a) Be located in a facility which properly accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and/or removing of ignition interlock devices.

(b) Have posted a current copy of all fees and rates a lessee may be charged to install, remove, repair or service an ignition interlock device by a fixed or mobile service center. The fees and rates must be plainly visible and capable of being read at all times by the public.

(c) Provide lessees a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge.

(d) Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

(e) Comply with all municipal and/or county zoning regulations for commercial businesses.

(f) Have and maintain a designated waiting area that is separate from the installation area for the lessee. The designated waiting area must be shielded from the installation area so a lessee or any other unauthorized person cannot witness the installation or service of the ignition interlock device.

(6) **Issuance of letter of certification for a fixed and/or mobile service center.**

(a) The chief or designee will have the authority to issue a letter of certification to a fixed and/or mobile service center if all qualifications outlined in this chapter have been met by the applicant.

(b) A letter of certification or a service center must be posted and visible to the public.

(c) The chief or designee will notify an applicant in writing if a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

NEW SECTION

WAC 204-50-046 Ignition interlock technician certification. (1) **The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician.** An application must be approved and letter of certification issued by the impaired driving section before an ignition interlock technician may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) **Application for letter of certification for an ignition interlock technician.**

(a) A manufacturer, vendor, or service center must submit an application to the impaired driving section for a letter of certification for each ignition interlock technician employed at a fixed or mobile service center.

(b) In order to receive a letter of certification for an ignition interlock technician, the applicant(s) shall:

(i) Complete the application form provided by the impaired driving section.

(ii) Have its employee complete the knowledge and skills examination administered by the impaired driving section. An applicant's employee must score eighty percent or higher on the knowledge and skills examination to be eligible for a letter of certification.

(iii) Submit, at the expense of the manufacturer, service center, vendor or applicant, a criminal history report conducted within the preceding thirty days of the date on the application. The criminal history report shall be attained from either the patrol's identification and criminal history section if the employee has lived in Washington for five years immediately preceding the date of the application or, a criminal background check from the agency responsible for keeping criminal history in the state or states of the previous residence of an employee who has not lived in Washington for the five years immediately preceding the date of application.

(c) The chief or designee will refuse to issue or may revoke a letter of certification for the ignition interlock technician if the ignition interlock technician:

(i) Has been convicted of:

(A) Any alcohol related traffic offense;

(B) Any offense classified as a felony within the five years prior to the date of the applicant filing an application for certification as an ignition interlock technician.

(ii) Has been granted a deferred prosecution under chapter 10.05 RCW.

(iii) Is not at least eighteen years of age.

(iv) Possesses a valid Washington driver's license if:

(A) The service center is providing a mobile service center; or

(B) The ignition interlock technician must operate a lessee's vehicle to provide services in accordance with this chapter.

(d) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.

(3) **Issuance of letter of certification for an ignition interlock technician.**

(a) The impaired driving section shall have the authority to issue a letter of certification for an ignition interlock technician if an application has been approved and all qualifications set out in this chapter have been met by the applicant.

(b) A letter of certification for an ignition interlock technician will be effective the date stated in the letter and contain a certification number specific to the ignition interlock technician.

(c) A letter of certification for an ignition interlock technician will be valid for one year or until suspended, superseded, or revoked by the impaired driving section.

(d) A letter of certification for an ignition interlock technician will be subject to review by the impaired driving section at its discretion during the course of the certification period.

(e) The impaired driving section will deny an application for a letter of certification for an ignition interlock technician if all qualifications are not met by the applicant, and it will notify the applicant and service provider or vendor or both within ten days of such determination.

(f) The chief or designee will notify the applicant in writing if an application for letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(4) **Renewal of a letter of certification for an ignition interlock technician.**

(a) A letter of certification for an ignition interlock technician certification must be renewed on an annual basis.

(b) An application to renew a letter of certification for an ignition interlock technician must be submitted at least thirty days prior to the expiration of the certification.

(c) An incomplete or untimely application may result in the expiration of a letter of certification for an ignition interlock technician. If a letter of certification for an ignition interlock technician expires, the ignition interlock technician identified in the expired letter of certification must immediately stop working as an ignition interlock technician until a new letter of certification is issued.

(d) Renewal of a letter of certification for an ignition interlock technician will be the same as the process outlined in this section, except the submission of a criminal history report may be submitted by the ignition interlock technician.

(e) If there is pending action against an ignition interlock technician for any violation of the rules outlined in this chapter, an application for the renewal of a letter of certification will not be processed until the pending action has reached a final resolution.

(f) The chief or designee will notify the service center in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certificate holder via certified mail, return receipt requested.

(5) **Surrender of a letter of certification for an ignition interlock technician.**

(a) An ignition interlock technician letter of certification may be surrendered upon written request from the vendor, service center, or an ignition interlock technician or if the impaired driving section receives written notification that the ignition interlock technician is no longer employed by a certified service center representing the same manufacturer under which the current ignition interlock technician certification was issued.

(b) The original letter of certification must be returned to the impaired driving section. If the original certification is not provided with the written notification the impaired driv-

ing section will instruct an inspector to obtain the original certification.

(6) **Suspension or revocation of a letter of certification for an ignition interlock technician.**

(a) The chief or designee may suspend or revoke certification of an ignition interlock technician who no longer meets all of the requirements outlined under the Revised Code of Washington or this chapter.

(b) The chief or designee will notify the ignition interlock technician in writing if a letter of certification has been suspended or revoked. The notice of suspension or revocation will be sent to the certificate holder via certified mail, return receipt requested.

(c) During a period of suspension of a letter of certification for an ignition interlock technician, the suspended ignition interlock technician must cease any and all activities related to the repair, installation, removal, or service of a certified ignition interlock device in the state of Washington.

(d) If a letter of certification for an ignition interlock technician is suspended or revoked the ignition interlock technician must, on demand, surrender the certification and return it to the impaired driving section.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-050 Modifications to a certified ignition interlock device. ((~~The~~)) (1) A manufacturer, vendor or service center must immediately notify ((~~IDS~~)) the impaired driving section, in writing, of any material modification. A material modification is any additional features, software configuration changes or alteration in the components and/or the design of the certified ignition interlock device. ((~~Within ninety~~)) Written notification of a material modification may be submitted in an impaired driving section approved electronic format.

(2) A manufacturer must resubmit evidence of compliance as required in WAC 204-50-040 to the impaired driving section within thirty days of notifying the ((~~IDS~~)) impaired driving section of ((~~the~~)) a material modification ((~~or alteration to a certified device, the manufacturer must resubmit to IDS the evidence of compliance as required in WAC 204-50-040~~)).

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-070 Variable calibration of an ignition interlock device. To be certified, ((~~a~~)) an ignition interlock device must be capable of being preset, by the manufacturer, vendor, service center or by an ((~~ASP~~)) ignition interlock technician, at any fail level from .02 through ((~~.09% BAC~~)) .09 g/210L BrAC (plus or minus ((~~.005% BAC~~)) .005 g/210L BrAC). The actual setting of each ignition interlock device, unless otherwise mandated by the originating court, must be ((~~.025 BAC~~)) .025 g/210L BrAC. The capability to change this setting must be made secure, by the manufacturer, vendor, service center or by an ((~~ASP~~)) ignition interlock technician.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-080 Certified ignition interlock device maintenance, calibration and reports. (1) Each ((~~lessee must~~)) restricted operator shall have the ignition interlock device installed in the restricted operator's vehicle(s) examined by the manufacturer, vendor, service center or ((~~by an ASP~~)) ignition interlock technician for correct calibration and evidence of tampering at intervals not to exceed sixty-five days, or more often as may be ordered by the originating court.

(2) ((~~The~~)) An ignition interlock device must be calibrated for accuracy ((~~according to the manufacturer's and the IDS's procedures,~~)) by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L. The result must be within plus or minus 0.01 g/210L of the reference value introduced into the ignition interlock device.

(a) Wet bath simulators must:

(i) Use a mercury in glass or digital thermometer ((~~with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade~~)). These thermometers must read 34 plus or minus .2 degrees Centigrade during analysis and be certified annually using a National Institute of Standards and Technology (NIST) ((~~certified~~)) traceable digital reference thermometer.

(ii) Be found on the current National Highway Traffic Safety Administration confirming products list of calibrating units for breath alcohol testers.

(iii) Use alcohol reference solutions prepared and tested in a laboratory such that their reference value is shown to be traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution must be tamper proof and labeled with the following: Lot or batch number, value of the reference sample in g/210L, and date of preparation and/or the expiration which must not be longer than one year from the date of preparation.

(b) Dry gas alcohol standards must be certified to a known reference value and traceable to National Institute of Standards and Technology - NIST Traceable Reference Material (NIST-NTRM) ethanol standards. ((~~This known~~)) The reference value will ((~~also~~)) be adjusted for pressure changes due to elevation to which the dry gas is being used.

(((~~(3) All data~~)) (i) Dry gas alcohol standard tanks must:

(A) Be stored in an environment where the temperature range remains between 50-104 degrees Fahrenheit.

(B) Have a label which will contain the following: Components and concentration of the reference value of the gas, expiration date which must not be longer than three years from the date of preparation, and the lot or batch number.

(ii) Each service center using a dry gas alcohol standard will have:

(A) An elevation chart which will be used to determine the proper reference value for the elevation for which the gas standard is being used.

(B) The certificate of analysis from the dry gas standard manufacturer.

(3) The results of each calibration including the reference value, calibration check, and any adjustments made for

elevation pressure must be recorded on the ignition interlock device data reader and/or data base.

(4) Data contained in ((~~the~~)) an ignition interlock device's memory or data reader must be downloaded and the manufacturer, vendor and/or ((~~the ASP~~)) service center must make ((~~a hard copy or~~)) an electronic ((~~equivalent~~)) copy of the client data and the results of each examination.

(5) Data downloaded by a manufacturer, vendor and/or service center from an ignition interlock device must be:

(a) Reviewed by the manufacturer, vendor, ignition interlock technician, and/or service center. Any evidence of noncompliance, violations, or signs of tampering and/or circumvention must be reported as requested by, and in a format acceptable to the originating court, ((~~IDS~~)) impaired driving section and/or DOL.

(b) All information obtained as a result of each calibration or inspection must be retained by the manufacturer, vendor or ((~~approved~~)) service ((~~provider~~)) center for ((~~two~~)) three years from the date the ignition interlock device is removed from the vehicle.

(((~~4~~))) (6) Any ((~~ASP~~)) service center proposing to offer a mail-in calibration and examination program to their lessees must obtain written approval from ((~~IDS~~)) the impaired driving section prior to implementing the mail-in program.

(a) To obtain approval ((~~the ASP~~)) for a mail-in calibration and examination program, a service center must submit a copy of written procedures outlining how the mail-in program will ((~~work~~)) comply with the requirements of this chapter.

(b) Written procedures for a mail-in calibration and examination program must include:

(i) A requirement that all restricted operators enrolled in the mail-in program have the ignition interlock device calibrated, downloaded, the ignition interlock device's wiring harness physically inspected in the vehicle in which it was installed at a fixed site service center of the manufacturer every one hundred ninety-five days for the period of installation.

(ii) A restriction prohibiting restricted operators from using the program during the last four months of a restricted operator's DOL or court mandated ignition interlock device period.

(iii) A disqualification for a restricted operator from the mail-in program if their data reader or data base shows a breath alcohol sample equal to or greater than .040 g/210L, or if a restricted operator and/or lessee has a violation reset condition.

((~~ASP~~)) (c) The manufacturer, vendor, ignition interlock technician or service center must ((~~also~~)) provide ((~~the customer~~)) a restricted operator with written instructions on how to utilize the mail-in program.

(d) A mail-in program does not eliminate or take the place of any requirements outlined in WAC 204-50-120.

(((~~5~~))) (7) The manufacturer, vendor and/or ((~~ASP~~)) service center must provide, upon request, additional reports in a format acceptable to and at no cost to DOL, ((~~IDS~~)) impaired driving section and/or the originating court.

(((~~6) The ASP~~)) (8) A service center must maintain records documenting all calibrations, downloads and any other services performed on an ignition interlock device, ((~~to include~~)) including service of a violation reset ((~~service~~)). Charges for installations, calibrations, downloads and service must be made using a numbered billing invoice. The billing invoice must contain the date of service and all fees for service must be itemized.

(((~~7~~))) (9) Retention of the record of installation, calibrations, downloads, service and associated invoices must be maintained on site for a minimum of ((~~two~~)) three years.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-090 Ignition interlock device security. ((~~The~~)) (1) A manufacturer and its ((~~approved~~)) vendors, service ((~~provider(s)~~)) center(s), and ignition interlock technicians must take all reasonable steps necessary to prevent tampering or physical circumvention of ((~~the~~)) an ignition interlock device. These steps must include:

(((~~1~~))) (a) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;

(b) Installation and/or use of all anticircumvention features required under this chapter;

(c) Changes in software and ignition interlock device configuration, including anticircumvention features and the Washington state configuration profile will only be administered by the manufacturer, and/or vendor.

(2) In addition, ((~~the approved~~)) a service ((~~provider~~)) center or ignition interlock technician will affix to the ignition interlock device a label containing the following notation: "Warning - This ignition interlock device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this ignition interlock device may subject you to criminal prosecution. For more information, call (insert ((~~manufacturer's~~)) manufacturer, vendor or ((~~approved~~)) service ((~~provider's~~)) center's toll free number)."

(3) No owner or employee of a manufacturer ((~~of ASP~~)), vendor or service center may authorize or assist with the disconnection of ((~~a~~)) an ignition interlock device, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning ignition interlock device, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's certification under WAC 204-50-040.

(4) All known ignition interlock device circumventions or tampering must be reported to the ((~~IDS upon request~~)) impaired driving section in an impaired driving section approved electronic format within seven days of determining that an ignition interlock device was circumvented or tampered with.

NEW SECTION

WAC 204-50-100 Installation of ignition interlock devices. (1) An ignition interlock device can only be installed by a certified ignition interlock technician.

(2) An ignition interlock technician shall not install an ignition interlock device on a vehicle unless the restricted operator is:

(a) Present at the service center;

(b) The registered owner of the vehicle or has a signed letter of authorization from the registered owner approving the ignition interlock device installation; and

(c) Provided ignition interlock device training by the manufacturer, vendor, service center, and/or certified technician. If the impaired driving section and/or DOL provides educational materials to the manufacturer, vendor, service center and/or technician, those training materials will be provided to the restricted operator and/or lessee in addition to the training required under this section.

(3) An ignition interlock technician shall:

(a) Record the following information before installing an ignition interlock device:

(i) The full name, current address, phone number, driver's license number of the lessee and/or restricted operator.

(ii) The vehicle license registration number for the vehicle in which the ignition interlock device is to be installed.

(iii) The unique serial number of the ignition interlock device installed and corresponding vehicle license registration number of the single vehicle in which it was installed.

(b) Ensure that no restricted operator, lessee or other unauthorized person witnesses the installation, service or removal of an ignition interlock device.

(c) Inspect all vehicles prior to installation of an ignition interlock device to determine if parts of a vehicle affected by an ignition interlock device are in acceptable condition and an ignition interlock device shall not be installed until the vehicle is in acceptable condition.

(d) Follow the manufacturer's instructions and regulations outlined in this chapter for the installation, servicing and removal of ignition interlock devices.

(e) Install the following physical anti-tampering measures:

(i) Place all connections and associated wiring between an ignition interlock device and a vehicle in an area of the vehicle not immediately accessible or visible to the lessee or restricted operator.

(ii) Cover with a unique and easily identifiable seal, epoxy, resin, shrink wrap, sheathing, or tamper proof tape:

(A) Any portion of an ignition interlock device that can be disconnected;

(B) Any wires used to install the ignition interlock device that are not inside a secured enclosure; and

(C) Mark points likely to be accessed when attempting to tamper with the ignition interlock device with other material unless the ignition interlock device is capable of recording such attempts to tamper with it.

(4) A service center or ignition interlock technician will:

(a) Thoroughly train a restricted operator on the proper use and functionality of an ignition interlock device; and

(b) Provide a user reference, operation, and problem-solving guide in English or Spanish to the restricted operator when an ignition interlock device is installed.

(5) A service center or ignition interlock technician will be available during all posted hours of operation to answer all questions and handle any problems related to a restricted operator's ignition interlock device, including repair or replacement of an inoperable or malfunctioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-110 Mandatory ((~~operational features~~)) requirements for an ignition interlock device. (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

(((~~(1)~~))) (a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

(((~~(2)~~))) (b) Automatically and completely purge residual alcohol before allowing subsequent tests.

(c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

(((~~(3)~~))) (d) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

(((~~(4) Be provided with an ample~~))) (e) Include a supply of twelve disposable mouth pieces designed to minimize the introduction of saliva into ((~~the~~)) an ignition interlock device.

(((~~(5)~~))) (f) Be uniquely serial numbered. ((~~Along with any other information required by DOL or by an originating court, all reports to DOL or to an originating court concerning a particular device must include the name, address, and driver's license number of the lessee, and the unique number of the device. The name, address, telephone number (toll free), and contact person of the manufacturer or approved service provider furnishing such report must also be included as part of the report.~~

~~(6)~~))) (g) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of ((~~the test~~)) all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of bypassing or tampering with the ignition interlock device, or tests.

(((~~(7)~~))) (h) On or before January 1, 2012, enter into a violation reset condition if the operator attempts to start the vehicle three times within a fifteen minute time period with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.

(i) Require the operator of the vehicle to submit to a retest within ten minutes of starting the vehicle. ((~~Retesting~~)) A rolling retest must continue at randomly variable intervals ((~~not to exceed sixty minutes after the first retest~~)) ranging from ten to forty-five minutes after the previous retest for the duration of the travel. ((~~The device must:~~

~~(a)~~))) (j) Be equipped with a method of immediately notifying ((~~peace~~)) law enforcement officers if ((~~the required retest(s) above is not performed,~~)) a violation reset occurs from a rolling retest or ((~~if~~)) the result of the retest exceeds the lower of ((~~.025 BAC~~)) .025 g/210L BrAC or the alcohol concentration as prescribed by the originating court. ((~~Examples of acceptable~~)) Acceptable forms of notification are

repeated honking of the vehicle's horn, repeated flashing of the vehicle's headlamps, or the ((~~wailing~~)) use of ((~~a small siren~~)) an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest at a level the lower of ((~~.025 BAC~~)) .025 g/210L BrAC or the maximum allowable alcohol concentration as set by the originating court.

(((~~(b) Automatically enter a violation reset condition. A device which enters a violation reset condition and the vehicle in which it is installed, must be returned to the manufacturer or ASP to be serviced~~)) (k) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physically inspected within five days ((~~or the device must render the vehicle inoperable~~)) of when the violation reset occurred.

(2) The manufacturer, vendor, ignition interlock technician or ((~~approved~~)) service ((~~provider~~)) center must notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court ((~~within five days of servicing the device~~)). The manufacturer, vendor or ((~~ASP~~)) service center must provide notification to DOL and ((~~IDS~~)) impaired driving section in ((~~a format~~)) an acceptable electronic format should DOL or ((~~IDS~~)) impaired driving section promulgate rules requiring such notification of a violation reset condition.

(3) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device; and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed the ignition interlock device.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-120 ((~~Other provisions.~~)) Additional requirements. (1) Notwithstanding other provisions of this chapter, each manufacturer of a certified ignition interlock device, either on its own or through ((~~its approved~~)) a vendor or service ((~~provider(s) must~~)) center shall:

(((~~(1)~~)) (a) Guarantee repair or replacement of a defective ignition interlock device within the state of Washington within a maximum of forty-eight hours of receipt of a complaint or known failure of an ignition interlock device.

((~~(2)~~)) (b) Demonstrate to the satisfaction of ((~~IDS~~)) impaired driving section, a service delivery plan under which any restricted operator may obtain installation and routine service of that manufacturer's ignition interlock device within a seventy-five mile radius of his or her place of residence.

(((~~(3) Provide IDS, a map of the state of Washington showing the area covered by each approved service provider, and the name, address, and telephone number of each approved service provider.~~

~~(a)~~)) (c) Receive written approval from impaired driving section and require lessees and restricted operators to sign an agreement to abide by all aspects of WAC 204-50-080 before mobile service centers may work outside of the umbrella of their overseeing fixed site service center(s) to provide service in rural areas of the state.

(d) Provide any written notification of any changes to ((~~its authorized~~)) a manufacturer's service ((~~provider~~)) center network to the impaired driving section within ((~~ten~~)) seven days of such change.

(((~~(b) Any additions to the approved service provider network, provide evidence to IDS that any added ASPs have the insurance coverage as required by subsection (7) of this section.~~

~~(4)~~)) (e) Maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees and/or restricted operators to call if they have problems with the ignition interlock device they have leased from the manufacturer, vendor or ((~~approved~~)) service ((~~provider~~)) center. Calls must either be answered by ((~~a~~)) an ignition interlock technician qualified to service the manufacturer's ignition interlock devices, or the call must be returned by a qualified technician within thirty minutes of the original call.

(((~~(5) Provide the lessee a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge. To ensure equal accessibility of the benefits of this technology to all citizens of the state of Washington, such pricing must be uniform statewide.~~

~~(6) Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.~~

~~(7)~~)) (2) The manufacturer shall provide to ((~~IDS~~)) the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence, and three million dollar aggregate. Liability covered must include, but not limited to: Defects in product design, materials, and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify ((~~IDS~~)) the impaired driving section not less than thirty days before the expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to, and not considered a replacement for coverage required in subsection (((~~8~~))) (3) of this section.

(((~~8~~))) (3) A vendor or service center shall provide ((~~IDS~~)) the impaired driving section proof on or before the expiration date listed on the current valid insurance on file

with the impaired driving section that each and every ((~~ASP~~)) service center has:

(a) Garage keepers liability insurance coverage with minimum liability limits of fifty thousand dollars. Liability covered must include, but not be limited to, damage to lessee's vehicle and personal property while in the care and/or custody of the ((~~ASP~~)) service center. ((~~Further must provide IDS proof that each and every ASP has completed~~))

(b) Operations insurance coverage with minimum liability limits of one million dollars per occurrence, and two million dollars aggregate. Liability covered must include, but not be limited to, defects in materials and workmanship during installation, removal, service, calibration, and monitoring.

((~~All such~~)) (c) Insurance ((~~must be~~)) provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify ((~~IDS~~)) the impaired driving section not less than thirty days before expiration or termination of such coverage.

(d) Insurance coverage required in this subsection must be in addition to and not considered a replacement for other coverage required in ((~~subsection (6) of~~)) this section.

((~~(9)~~)) (4) A vendor or service center shall notify the DOL in an acceptable format and if so requested by the originating court, notify the originating court, if any, of the removal of ((~~a~~)) an ignition interlock device under any circumstances other than:

(a) Immediate ignition interlock device repair needs.

(b) Removal of the ignition interlock device in order to switch it to a replacement vehicle to be operated by the restricted operator. Report of such a vehicle switch including the license of the vehicle must be transmitted to the DOL, and the originating court within two business days of such a switch, if so requested by the originating court at the time of initial installation of the ignition interlock device. Report of such a vehicle switch must be transmitted to the DOL within two business days of such a switch, if so requested by the DOL. **NOTE:** Whenever ((~~a~~)) an ignition interlock device is removed for repair, and cannot be immediately reinstalled, a substitute ignition interlock device must be utilized. Under no circumstances will a manufacturer ((~~or ASP~~)), service center or ignition interlock technician knowingly permit a restricted operator to drive a vehicle not equipped with a functioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 09-18-073, filed 8/31/09, effective 10/1/09)

WAC 204-50-130 ((~~Removal procedures.~~)) Requirements for removing an ignition interlock device. ((~~The manufacturer or its approved service provider must remove the device and return the vehicle in normal operating condition. The manufacturer or its ASP must provide any final report requested by the originating court, IDS and/or requested by DOL.~~)) (1) An ignition interlock device shall not be removed from a restricted operator's vehicle(s) unless the restricted operator has met all of the requirements of RCW 46.20.720(4) during the last four months of a restricted operator's mandated ignition interlock device period. A vendor will determine a restricted operator's compliance of this section in accordance with RCW 46.20.720.

(2) The manufacturer or its service center must remove the ignition interlock device after authorization has been obtained under subsection (1) of this section and return the vehicle in normal operating condition.

(3) An ignition interlock technician or service center can only remove an ignition interlock device for which they have been certified to service, unless an ignition interlock technician or service center has received written approval from the impaired driving section allowing it to remove an ignition interlock device that it has not been certified to remove.

(4) A manufacturer or its service center shall provide any final report requested by the originating court, impaired driving section and/or requested by DOL to the requestor once the ignition interlock device has been removed from a restricted operator's vehicle(s).

NEW SECTION

WAC 204-50-140 Review of denial, suspension or revocation of certification. (1) The chief or designee may deny, suspend, or revoke a letter of certification for an ignition interlock device, service center, or ignition interlock technician upon receiving evidence that any letter of certification holder has failed to comply or no longer complies with any requirement or provision of law or this chapter. The following process will be used:

(a) The chief or designee will give the applicant or certificate holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to denial, suspension, or revocation of the letter of certification, except as provided in subsection (2) of this section.

(b) Upon receiving notice of the action, the applicant, or certificate holder may request an administrative hearing to contest the decision. A request for an administrative hearing must:

(i) Be made in writing and mailed to the Washington State Patrol Impaired Driving Section, 811 East Roanoke St., Seattle, WA 98102; and

(ii) Be received by the patrol's impaired driving section within twenty business days after the date of the notice of action.

(2) The chief or designee may, without prior notification, suspend a letter of certification for a device, service center, or ignition interlock technician if the chief or designee finds that there is danger to the public health, safety, or welfare that requires immediate action. For every summary suspension of a letter of certification, an order signed by the chief or designee must be entered in accordance with the provisions of RCW 34.05.479.

(3) Failure to request a hearing or failure to appear at a hearing, a prehearing conference, or any other stage of an adjudicative proceeding may constitute default and result in the entry of a final order under RCW 34.05.440.

(4) Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action will be promptly instituted and determined. The chief or designee must give notice as practicable to the letter of certification holder.

(5) Unless the chief or designee finds the immediate revocation is necessary or unless the certificate holder timely requests a hearing as provided under this section, a decision to revoke or suspend will be effective thirty days from the date of the notice of action decision unless the chief or designee finds that immediate revocations is necessary.

NEW SECTION

WAC 204-50-150 Hearing procedure. (1) Hearings under this chapter will be pursuant to chapters 34.05 RCW and 10.08 WAC as supplemented by this section.

(2) A presiding officer will conduct a hearing and any prehearing conference(s).

(3) The burden of proof in any hearing will be on the applicant seeking the letter of certification, or on the person or agency seeking the suspension or revocation of a letter of certification or other action by the chief or designee.

(4) Oral proceedings must be recorded by the method chosen by the chief or designee and such recording will become part of the hearing record.

(5) The following process applies to administrative hearings under this chapter:

(a) The patrol will notify the assistant attorney general of the petitioner's request for an administrative hearing.

(b) The assistant attorney general will draft an administrative complaint and send it to the petitioner and to the office of administrative hearings.

(c) The office of administrative hearings will schedule a hearing date, and will notify the petitioner, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(d) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(e) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the patrol.

(f) At the hearing, the petitioner may be represented by an attorney or may choose to represent himself or herself. The petitioner or his/her attorney will be allowed to present witnesses and other evidence.

(g) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(6) Initial and final order. At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the petitioner and the assistant attorney general.

(a) Either the petitioner or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the chief or his/her designee for review. Following this review, the chief or his/her designee will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

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.

NEW SECTION

WAC 204-50-160 Appeal. Any person aggrieved by the decision of the chief or designee denying, suspending, or revoking a certification may appeal such decision to the superior court under the provisions of chapter 34.05 RCW.

WSR 10-20-133
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 5, 2010, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-093.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for workers' compensation insurance.

Hearing Location(s): Tumwater L&I Building, Room S118, 7273 Linderson Way, Tumwater, WA, on November 10, 2010, at 1:00 p.m.

Date of Intended Adoption: November 30, 2010.

Submit Written Comments to: Mr. Ronald Moore, P.O. Box 44140, Olympia, WA 98504, e-mail MOOA235@LNI.Wa.Gov, fax (360) 902-4748, by November 10, 2010.

Assistance for Persons with Disabilities: Contact Craig Lowe at (360) 902-4579 or TTY (360) 902-5797, by November 2, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Classification services has conducted a study of the explosives industry in Washington state. Classification 4601, used for explosives, ammunition and fireworks manufacturing, is assigned to only seven employers, in three subcodes.

Classification 4601 was one of the original classifications developed in 1911 when explosives production was much different than it is now. With the development of more stable products, better methods, and safety regulation by numerous state and federal agencies, a change is warranted.

WAC 296-17A-4601-01, fireworks manufacturing, 4601-02, explosive powder manufacturing, and 4601-03, combined chemicals and explosives manufacturing - repeal.

WAC 296-17A-2106 Agricultural fertilizer and chemical dealers - create a new subclassification to cover those businesses that are dealers of explosives, not manufacturers.

WAC 296-17A-3402-61, small arms manufacturing - amend to incorporate small ammunition manufacturers and reloaders into small arms manufacturing.

WAC 296-17A-3701-07, chemical mixing - amend to incorporate fireworks manufacturing.

Reasons Supporting Proposal: This rule making will put explosive dealers into a classification more closely aligned with the nature of their work, and reassign the few businesses remaining in 4601 to other classifications that are a better fit for their operations.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

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

Name of Agency Personnel Responsible for Drafting: Renee Brady, Tumwater, (360) 902-4773; Implementation: Ronald C. Moore, Tumwater, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case, the agency is exempt from completing a small business economic impact statement because the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.328 (5)(b)(vi).

A cost-benefit analysis is not required under RCW 34.05.328. In this case, the agency is exempt from completing a cost-benefit analysis because the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi).

October 5, 2010
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2106 Classification 2106.

2106-00 Fertilizer, anhydrous ammonia and agricultural chemical dealers

Applies to establishments engaged in the sale of fertilizer, anhydrous ammonia, and agricultural chemicals. This classification includes the mixing of wet or dry chemical fertilizers all of which fall into one of three categories: Nitrogen, phosphate or potassium. Fertilizer dealers may use a chemical or mechanical process to mix one or more of the basic fertilizers or combine portions of each per customer specifications. Included in this classification is the manufacture, distribution, and application of anhydrous ammonia which is dry ammonia gas compressed into a liquid and used as a fertilizer. Also included in this classification are establishments that sell and distribute "natural" fertilizers (manure). Typical establishments in this classification include, but are not limited to, commercial fertilizer dealers, farmer co-ops, and grange supply dealers which may do some chemical mixing but are more predominately involved in the sales and delivery of the fertilizer.

This classification excludes the mining of raw ores (phosphate and potassium) used in *manufacturing* the fertilizer which is to be reported separately in classification 1701; the manufacture of ammonia and nitric acid which is to be reported separately in classification 3701; and the application of fertilizer by a custom farm services contractor which is to be reported separately in classification 4808.

2106-01 Explosive powder and chemical dealers

Applies to establishments engaged in the sale of explosive powders and chemicals, including the incidental mixing, blending, packaging, and bulk delivery and/or blending at the customer's site and in the sale of blasting supplies. Products include, but are not limited to, dry, liquid and gel explosives, fuses and detonators.

This classification excludes the mining of raw ores or the manufacture of chemicals used in manufacturing explosives which are to be reported separately in 1701 and 3701 respectively, the manufacture of explosive devices which is to be reported separately in the applicable manufacturing classification, and contract blasting such as at a quarry or construction site which is to be reported separately in classification 0103.

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

WAC 296-17A-3402 Classification 3402.

3402-00 Air compressor: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of air compressors. This includes air or gas compressors used for paint sprayers, air tools, tire inflation, and general industrial purposes. Operations contemplated include, but are not limited to, welding, machining, general mechanical and electrical work. Machinery and equipment includes, but is not limited to, hand and air tools, welders, punches, shears, and compression equipment. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-01 Printing or bookbinding machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of printing or bookbinding machinery. The outside casings of the machines may be made of plate metal that varies between 1" to 2 1/2" in thickness. The machines used to make the presses and binding machinery may include both Computer Numeric Controlled (CNC) and manual mills and lathes. Other machinery used in the manufacturing process includes, but is not limited to, welders or cutters, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being

performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; and the set up, installation and repair of printing or bookbinding machinery which is to be reported separately in classification 0603.

3402-02 Pump, safe, scale, auto jack, and water meter: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of pumps, safes, scales, auto jacks, and water meters. Materials range from brass screws and rubber washers used to rebuild water meters to plate metal and steel castings used for safe and pump manufacturing. Machinery includes, but is not limited to, hand tools used for repairs, lathes, welders, and pressure testers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; the installation and repair of safes which is to be reported separately in classification 0607; and the installation of pumps which is to be reported separately in the applicable classification.

3402-03 Shoe or textile machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of shoe machinery or textile machinery. Metal materials used vary in size, shape and dimension. Machinery includes, but is not limited to, drills, mills, lathes, saws, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation and repair of shoe or textile machinery which is to be reported separately in classification 0603.

3402-04 Confectioners or food processing machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of food processing or confectioners machinery. Metal materials used vary in size, shape and weight. These establishments often have an assembly line operation and a separate electronic assembly area. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation and repair of confectioners and food processing machinery which is to be reported separately in classification 0603.

3402-05 Machine shops, N.O.C.

Applies to establishments engaged in general machine shop operations not covered by another classification (N.O.C.), tool sharpening, and mobile welding shops. Many of the establishments in this classification are "job shops." Size and shape of materials vary with steel and aluminum being the most common. Plastics, light weight aluminum, and alloyed metals are becoming increasingly popular in the manufacture of equipment for some industries. These establishments often have welding shops along with machine shops. Machinery and equipment includes, but is not limited to, mills, lathes, grinders, saws, welding equipment, inspection equipment, and material handling equipment. Machinery is both manual and Computer Numeric Controlled (CNC). This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, however, sometimes the broken part is removed and taken back to the shop for repair.

This classification excludes repairs to buildings and structures which are to be reported separately in the appropriate construction classification, and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

***Special note*:** The term "job shop" is an industry term that means the shop will produce products to customer specifications.

3402-06 Power saw, lawn and garden equipment, small motor, N.O.C.: Repair

Applies to establishments engaged in repairing small power tools, small motors powered by gas or diesel, outboard marine engines, and lawn and garden equipment not covered by another classification (N.O.C.). The largest piece of equipment repaired in this classification is generally a riding lawn mower. Classification 3402-06 is assigned in conjunction with a store classification for establishments that have a store operation and also repair the type of items they sell. Classification 3402-06 may also be assigned to a manufacturers representative who performs warranty repairs. Tools used in this type of repair are mainly hand and air tools. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the repair of electrical motors which is to be reported separately in classification 5201.

3402-07 Gear: Manufacturing or grinding

Applies to establishments engaged in the manufacture or grinding of gears. Establishments in this classification may also cut key slots and broaches. Establishments that cut stock

to manufacture the gear are often not the same ones that perform the final grinding process. Gears may go through two, three, or four different grinding, slotting, and/or keying establishments and then go to another establishment for electroplating or galvanizing before they are ready for sale or use. Precision machine shops may grind gears to the ten thousandths of an inch. Materials used are usually stainless steel, aluminum, or plastic. Machinery includes, but is not limited to, gear shapers, drill presses, mill, hobbers, grinders, some of which might be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-08 Elevator: Manufacturing

Applies to establishments engaged in the manufacture of elevators and associated electronic components. Machinery includes, but is not limited to, mills, drills, lathes, saws, and grinders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation, service, and repair of elevators which is to be reported separately in classification 0602.

3402-12 Multimedia blasting

Applies to establishments engaged in multimedia (such as, but not limited to, glass, plastic and sand) blasting operations which strip paint or other coatings from metal or fiberglass. Most of the blasting operations in this classification are done on automobiles, but it also applies to establishments that perform blasting on items such as, but not limited to, barbecue grills, and cast iron pieces. Multimedia blasting processes in this classification are performed in a shop, use less air pressure and media with softer finishes than other blasting operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and sandblasting of buildings or structures which is to be reported separately in classification 0504.

3402-14 Furnace, heater, radiator, wood, propane, or pellet stoves: Manufacturing

Applies to establishments engaged in the manufacture of furnaces, radiators, wood, propane, or pellet burning stoves or similar heating fixtures. Materials include, but are not limited to, metal cast parts, sheet metal, plate metal, aluminum, or stainless steel. Machinery includes, but is not limited to, hand tools, solder guns, punches, lathes, and saws. Establishments in this classification may have separate areas for electronic assembly and/or painting. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of radiators for automobiles or trucks which are to be reported separately in classification 3402-48; and establishments engaged in the manufacture of baseboard heaters which are to be reported separately in classification 3404.

3402-16 Die casting

Applies to establishments engaged in the manufacture of products by die casting. Die casting is a manufacturing process for producing accurately-dimensioned, sharply-defined metal products which are referred to as "die castings." "Dies" are the steel molds used to mass produce the product. The process begins when ingots of various metal alloys are melted in die casting machines. The machine forces the metal into the die under hydraulic or pneumatic pressure. The casting quickly solidifies in the die, and is automatically ejected by the machine, and the cycle starts again. The castings are cleaned by grinding or sanding, which also removes any excess metal "flash." Many die casting manufacturers maintain their own machine shop for making the dies. Die making, when done as a part of die casting operations, is included within the scope of this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; and establishments engaged in making dies for others which are to be reported separately in classification 3402-74.

3402-26 Saw blade: Manufacturing, assembly, or sharpening

Applies to establishments engaged in the manufacture, assembly, or sharpening of saw blades such as, but not limited to, those used in circular saws, band saws, ripsaws, keyhole saws, and handsaws such as hacksaws or meat saws. This classification also includes sharpening services for items such as, but not limited to, tools, scissors, and knives. Materials include, but are not limited to, high tensile steel and carbide tipped blades. Machinery includes, but is not limited to, saws, mills, drills, and hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work

being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the repair or sharpening of chain saws which are to be reported separately in classification 3402-06; and establishments engaged in the manufacture or repair of electrical saws which are to be reported separately in classification 5201.

3402-28 Heat treating metal

Applies to establishments engaged in heat treating metal. The heat treating process may use computer numeric controlled ovens or furnaces. The oven may heat up to 1200 degrees Fahrenheit and a furnace may heat up to 2000 degrees Fahrenheit. The metal(s) is placed on a platform; the platform is hydraulically moved into the first chamber and the door is automatically closed. At this time, the oxygen is burned from the chamber. Then the second chamber door is opened and the metal enters the oven/furnace. Depending upon the specifications, the heat treating process usually takes six to sixteen hours. When the metal is finished in the heating chamber it returns automatically to the first chamber. Then the platform lowers and the metals are dipped into a cooling agent. Once the metals are cooled to room temperature the platform rises, the door opens, and the materials are removed. The process is essentially the same using noncomputer numeric controlled heat treating equipment except that, rather than being hydraulically operated, the machine operators move the metals through the system. Many establishments do not produce a product, but heat treat a variety of products to customer specifications. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-29 Nut, bolt, screw, nail, tack, rivet, eyelet spike, needle, N.O.C.: Manufacturing
Sprinkler head, speedometer, carburetor: Manufacturing or assembly

Applies to establishments engaged in the manufacture of nuts, bolts, screws, nails, tacks, rivets, eyelets, spikes, and needles not covered by another classification (N.O.C.). This classification also applies to establishments engaged in the manufacture or assembly of sprinkler heads, speedometers, or carburetors. Materials include, but are not limited to, steel or iron rods which may be pressed or formed, and small component parts. Machinery includes, but is not limited to, saws, shears, presses, chuckers, threading and tapping machines, some of which may be Computer Numeric Controlled (CNC). Establishments may have separate areas for deburring, inspecting, packing and shipping. The carburetor rebuilding may be performed on vehicles that are driven or towed into the shop, or on carburetors that have been already removed from the vehicles. In either case the repairs are made exclusively with hand and air tools and sometimes a diagnostic scope and a drill press. A speedometer is usually embodied with a mileage recording mechanism. The central feature of the device is a permanent magnet. There are gears, spindles, and a drive shaft present in most speedometers. There is also a unit counting disc and a spiral spring calibrator. Hand tools are used almost exclusively in the repair of this kind of speedometer. Today many speedometers are computer controlled. Basically, if this kind of speedometer is in need of repair, a computer chip(s) is replaced, using hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of hardware that is not covered under another classification, such as handles, latches, and hinges which are to be reported separately in classification 3404, and the repair of speedometers or carburetors in a vehicle which is to be reported separately in the appropriate vehicle repair classification.

3402-32 Abrasive wheel: Manufacturing

Applies to establishments engaged in the manufacture of abrasive wheels. Manufacturing operations often include a laboratory where carbon and other materials are mixed together to form the abrasive edge of the mainly high tensile steel wheels. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-40 Welding or cutting, N.O.C. (*mobile operations limited to repair of equipment and machinery*)

Applies to establishments engaged in welding or cutting operations not covered by another classification (N.O.C.) either in the shop or at the customer's site. Steel is the predominant material along with some aluminum alloys. Machinery is predominantly welding equipment, but may include tools such as, but not limited to, grinders, saws, drills, and material handling equipment. This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, sometimes with the use of the customer's equipment; however, broken parts may be removed and taken back to the shop for repair.

This classification excludes welding construction and repairs to buildings or structures which are to be reported separately in the appropriate construction classification and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

3402-48 Automobile or truck, radiator and heater core: Manufacturing and repair shops

Applies to establishments engaged in the manufacture and/or repair of automobile or truck radiator and heater cores. Manufacturers in this classification may have a die casting area and a separate electronic assembly area. Tools and equipment include, but are not limited to, hand tools, solder guns, and punches. Shops that repair radiators may work on the radiators in the vehicles, but usually the radiators have been removed from the vehicle. The radiator is examined and the core may be removed. Next the radiator is cleaned, air pressurized, and dipped in a water tank to check it for leaks. Once the leaks are found they can generally be repaired by welding the holes shut. The radiator is dipped again to ensure the repair has been made properly. Cleaning the radiator may be done by sandblasting, ultra sound baths or by "rodding" the radiator to remove corrosion. Repair equipment includes, but is not limited to, welders, air and hand tools, dipping tanks, hoists, and forklifts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-60 Office machinery, N.O.C.: Manufacturing or assembly; Cash register or sewing machines: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of cash registers, sewing machines and office machinery not covered by another classification (N.O.C.) such as, but not limited to, copiers, collators, mail/postage machines, calculators and automatic letter openers. Component parts may be metal, plastic, or wood. Operations include, but are not limited to, cutting, shaping, forming, drilling, riveting, clamping, and bolting; there may be a separate electronic assembly area. Machinery and tools vary within this classification; some establishments use hand and air tools only, others use additional equipment such as, but not limited to, saws, lathes, mills, drills, or water jets, some of which may be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-61 Small arms <u>and ammunition</u>: Manufacturing, assembly, or rebuild

Applies to establishments engaged in the manufacture, assembly, or rebuild of small arms<u>, the manufacture of ammunition and reloading</u>. For the purpose of this classification, small arms means .50 caliber or less, such as pistols, rifles, shotguns, and light machine guns. Operations include, but are not limited to, metal stamping of casings, machining, assembling, and a high proportion of inspecting. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; ((~~establishments engaged in the manufacture of ammunition which is to be reported separately in classification 4601;~~)) the manufacture or repair of heavy arms which is to be reported separately in classification 5109; and gun stores which are to be reported separately in classification 6309.

3402-74 Tool: Manufacturing, not hot forming or stamping; Die: Manufacturing - ferrous

Applies to establishments engaged in tool manufacturing or die manufacturing, for others, from ferrous materials. Tools manufactured in this classification are usually cutting tools used in lathes, mills, rotors, and saws. Machinery includes, but is not limited to, sharpeners, grinders, lathes and mills, which are both manual or Computer Numeric Controlled (CNC). The die manufacturing included in this classification includes those made exclusively of ferrous materials including, but not limited to, jigs, fixtures, and dies for metal work in general. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of machine-finished tools which are to be reported separately in classification 3402-83.

3402-77 Auto, truck, semi-trailer and bus body: Manufacturing;
Travel trailer body: Manufacturing or repair

Applies to establishments engaged in the manufacture of auto, truck, and bus bodies, and in the manufacture or repair of travel trailer bodies or cargo containers. Repairs are usually made with the use of welders or cutting torches and air or hand tools. These establishments will also repair or replace hydraulic units. Material used in the manufacture of goods in this classification is usually steel and aluminum, varying in thickness from 16 gauge to plate metal up to one inch thick. Shapes include, but are not limited to, sheet metal, tubes, solid rod or I-beams. Equipment includes, but is not limited to, shears, breaks, hydraulic presses, iron workers, drill presses, grinders, welders, hoist, cranes, and forklifts. Shops may have a finish sanding area as well as a paint area where the vehicle bodies are sprayed with primer, a body bonding

material, or a finish coat of paint. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-83 Tool: Manufacturing and machine finishing

Applies to establishments engaged in manufacturing and machine finishing tools. Tools manufactured in this classification are usually hand held instruments such as, but not limited to, wrenches, screw drivers, hammers, torque wrenches, pliers, and sockets. Machinery includes, but is not limited to, air and hand tools, polishers, grinders, inspection equipment, mills, lathes, shapers, and drill presses, some of which may be Computer Numeric Control (CNC). Establishments may have a galvanizing and/or electroplating area for the finish work which is included when performed by employees of employers subject to this classification. Other establishments in this classification send the finish work out. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of tools from ferrous materials which are to be reported separately in classification 3402-74; and establishments engaged in tool forging which are to be reported separately in classification 5106.

3402-85 Auto or truck parts: Machining or rebuild not in vehicle

Applies to establishments engaged in machining or rebuilding auto or truck parts such as, but not limited to, water pumps, fuel pumps, transmissions, heads, brake drums, ball joints, and rear ends, which are not in the vehicle. Work contemplated in this classification may also include manufacturing sockets, pulleys, shafts, fittings, flywheels, and/or bearings. Machinery includes, but is not limited to, mills, lathes, grinders, sanders, presses, welders, and balancing equipment. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines which are to be reported separately in classification 3402-86.

3402-86 Auto, truck or aircraft engine, N.O.C.: Manufacturing or rebuilding

Applies to establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines not covered by another classification (N.O.C.), including manufacturing the component parts. Establishments in this classification often specialize in the type of engines they make or rebuild. The basic difference between automobile, truck, and aircraft engines is the size and weight of the parts being worked on. Engine rebuild shops use many specialized machines and air tools to tear the core down to an engine block; then rebuild the engine. After the engine is stripped down to the engine block, it is placed in a machine called a baker which heats to approximately 600 degrees and bakes away the grease. After baking, the engine block is placed in a sand blaster where the surface is cleaned with very fine steel shot. The engine block is then placed in a large pressure washer which removes the steel shot. Next, the crank and cam shafts are ground and turned on machinery similar to lathes. There is usually a separate room or area which is called the "head shop" where the heads and valves are machined on valve grinders, valve facers, and head grinders. Engine rebuild shops that do not have the equipment to grind the crank and cam shafts will contract work out to other shops, or buy new crank shafts and cam shafts. Other machinery includes, but is not limited to, boring bars and hones to polish cylinder walls, small pressure washers for oil pans and other smaller parts, solvent tanks, and hoists or forklifts for lifting the engines or engine parts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in machining or rebuilding auto or truck parts, other than engines, which are to be reported separately in classification 3402-85.

3402-91 Bed spring or wire mattress: Manufacturing

Applies to establishments engaged in the manufacture of bed springs or wire mattresses. The wire stock is coiled and cut to length on a coiling machine, then tempered in an oven to produce the spring. The coils are fastened to the frame either by hand or by machine. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of stuffed mattresses which are to be reported separately in classification 3708.

3402-93 Valve: Manufacturing

Applies to establishments engaged in the manufacture of valves. Valves regulate the flow of air, gases, liquids, or loose material through structures by opening, closing, or obstructing passageways. They are operated manually, electrically, with compressed air, or hydraulic pressure. Valves are usu-

ally cut from aluminum, steel, or stainless steel either by a Computer Numeric Controlled machine (CNC) or water jet machine. Depending upon the complexity of the valve, they are assembled in one or several stages. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of valves made in a die mold which are to be reported separately in classification 3402-74.

3402-94 Precision machined parts, N.O.C.: Manufacturing

Applies to establishments engaged in manufacturing precision machined parts not covered by another classification (N.O.C.). Most of these establishments are "job shops." Job shops make component parts for other businesses according to customer specifications, rather than manufacturing a specific product. Many establishments in this classification manufacture precision parts for the aerospace industry. Machining usually begins with solid blocks of material such as, but not limited to, steel, aluminum, titanium, inconel, or plastic, although some hollow tube, flat bar, and angle stock may also be used. The "rough cuts" are often made on manual machines, and the finish cuts on Computer Numeric Controlled (CNC) machines. Depending on the establishment and the job specifications, a specific part may be sent to one or more additional shops to be tempered, milled, or inspected before the original establishment is through with the manufacturing process. Some parts are so sensitive that climate controlled conditions are necessary. Both manual and CNC mills and lathes are the most common types of machines used. Others include, but are not limited to, saws, drills, and grinding machines. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-95 Storage battery: Manufacturing, assembly or repair

Applies to establishments engaged in the manufacture, assembly, or repair of storage batteries. Lead ingots, weighing 20-25 pounds, are melted and poured into a mold or casting machine. After the grids are cooled lead oxide is then pumped onto each side of a grid and cured by baking in an oven of about 300 - 400 degrees F. The plates are then assembled by placing a negative separator (zinc) between a positive separator (copper), and so forth until there are enough of these cells to form the battery. Next, they are sent to a burning machine that cures the paste and plates. After the burning process, the plates are placed into a plastic or hard rubber box-like container and cured for two or three days. The plates are welded together and the top is attached to the body of the battery case with an epoxy glue. Diluted sulfuric acid is added to the battery and then it is put on a charger. The battery is then cleaned and packed for shipping. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of dry cell (flashlight type) batteries which are to be reported separately in classification 3602; and establishments engaged in battery sales and installation which are to be reported separately in the applicable automotive services classification.

3402-96 Automobile or motorcycle: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of automobiles or motorcycles. Most of the manufacturing operations, such as cutting, milling, and turning, are performed with Computer Numerically Controlled (CNC) machinery. Most of the assembly operations are performed with air and hand tools. Other machinery includes but is not limited to saws, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged only in the manufacture of auto bodies which are to be reported separately in classification 3402-77.

3402-98 Machinery, N.O.C.: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of machinery not covered by another classification (N.O.C.). For purposes of this classification, machinery means any combination of mechanical parts constructed primarily with metal. Finished products vary widely and range from hand held machines to those weighing thousands of pounds; products include, but are not limited to, grinding machines, boring machines, conveyer systems, and wood chippers. Machinery used to manufacture these items includes, but is not limited to, lathes, mills, press, breaks, shears, and welders, some of which may be Computer Numerically Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation.

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

3402-99 Photo processing machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of photo processing machinery such as, but not limited to, photo processors or film enlargers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3701 Classification 3701.

3701-03 Ammonia, nitrogen and ammonium nitrate: Manufacturing

Applies to establishments engaged in the manufacture of ammonia, nitrogen and ammonium nitrate. Ammonia is a colorless gas used as a component in fertilizer, medicines and cleaning compounds manufacturing. The manufacturing process involves combining hydrogen and nitrogen gases with a catalyst which causes a reaction between the two gases when heated in a generator. Ammonium nitrate is a crystalline compound used mainly in fertilizers, explosives and propellants. The manufacturing process involves combining ammonia and nitric acid in a reactor. Nitrogen is a colorless gas that is obtained from the air and processed by compressing air in a pressurized tank, removing impurities, and separating nitrogen and oxygen through heating.

3701-04 Nitrate recovery from X-ray and photo films

Applies to establishments engaged in recovering nitrate or silver from X-ray and photo films. The recovery process involves placing the films in developing solutions, ionizing the solution and separating the elements.

3701-05 Dye and chemicals: Manufacturing

Applies to establishments engaged in the manufacture of all types of dyes and in the manufacture of dyes and chemicals that are used exclusively for tinting candles. Organic and inorganic compounds such as, but not limited to, phenols, alcohols, caustics, acids, salts and gases are used in the manufacturing process. Manufacturing methods include, but are not limited to, weighing raw materials to specifications and pumping them into vats where they are heated, agitated and cooled. They are then filtered through presses, dried in ovens, ground into a powder, and then packaged. Liquid or paste forms of dye go through the same process with the exception of the drying and grinding operations.

3701-06 Chemicals, N.O.C.: Manufacturing by nitration, alkylation and oxidation processes

Applies to establishments engaged in the manufacture of chemicals not covered by another classification (N.O.C.) using a nitration, alkylation or oxidation process. Nitration involves the combining of nitrate with an organic compound to produce nitrobenzenes used in solvents, fertilizers and acids. Alkylation involves combining alkyls with other substances to form products used in the production of paper pulp, hard soap and petroleum products. Oxidation involves the combining of oxygen with other substances to produce products such as, but not limited to, hydrogen peroxide, protective metal coatings, and pharmaceutical preparations.

This classification excludes the manufacture of ammonia or nitrogen which is to be reported separately in classification 3701-03 and the manufacture of oxygen, hydrogen, acetylene gas, carbonic acid gas, or acids which is to be reported separately in classification 3701-10.

3701-07 Chemical mixing, blending and repackaging only; Fireworks manufacturing

Applies to establishments engaged exclusively in mixing, blending or repackaging chemicals; it does *not* apply to the manufacture of ingredients for the mixing operation. The product may be mixed by hand or through a mechanical process. The equipment used by establishments covered by this classification is limited to storage tanks, mixing or blending screens and vats, filling and packaging machines and miscellaneous equipment such as fork lifts and trucks. Fireworks are assembled by hand and using hand operated tools.

This classification excludes establishments involved in more than a mixing, blending or repackaging operation which are to be reported separately in the appropriate chemical manufacturing classification, and technicians who set up and carry out fireworks displays who are to be reported separately in classification 6207.

3701-08 Cosmetics: Manufacturing

Applies to establishments engaged in the manufacture of cosmetics such as, but not limited to, soap, shampoo, hair conditioners, skin moisturizers, baby powder, lipstick, nail polish, bath oil, bath salts, and various personal care creams, gels or lotions. The process involves the mixing of premanufactured ingredients, using equipment such as storage tanks, mixers, heating devices, bottling/packaging/labeling equipment, and laboratory equipment for product development and quality control.

This classification excludes the manufacturing of the ingredients used in the mixing of the cosmetics.

3701-09 Drug, medicine, or pharmaceutical preparation: Manufacturing

Applies to establishments engaged in the manufacture of pharmaceuticals including drugs, medicines, and preparations such as, but not limited to, tablets, pills, ointments, liquids, and powders. Processes contemplated by this classification include mixing or blending of the base medicinal ingredients and additives such as, but not limited to, sugars, starches, flavorings, and waxes used for coating tablets. Compounds are then pulverized, distilled, heated and/or dried.

This classification excludes the manufacture or harvest of the ingredients used in the manufacture of the pharmaceuticals.

3701-10 Oxygen, hydrogen, acetylene gas, carbonic acid gas: Manufacturing

Applies to establishments engaged in the manufacture of oxygen, hydrogen, acetylene gas, carbonic acid gas, dry ice, or acid. The manufacture of oxygen and hydrogen involves the recovery of these gaseous elements from the air by compression, expansion and cooling operations until it liquefies. The liquid air then goes to a fractionator where the oxygen is separated from the hydrogen along with other gases such as neon and helium. Acetylene is a highly flammable but nontoxic gas that is manufactured by reacting calcium carbide with water in a pressure generator which combines carbon and lime to form the end product. Carbonic acid gas, also know as phenol, is a caustic poisonous gas used in manufacturing resins, plastics, and disinfectants. The manufacture of phenol involves a compression and refrigeration process.

3701-11 Alcohol: Manufacturing, distilling, N.O.C.

Applies to establishments engaged in manufacturing or distilling nonspirituous alcohol not covered by another classification (N.O.C.). Types of alcohol include, but are not limited to, methanol (wood alcohol), ethanol (grain alcohol) or denatured alcohol (combination of methanol and ethanol). Products produced include, but are not limited to, solvents, processing materials, germicides, antiseptics, or materials intended to be used as an ingredient in other products such as varnish and shellac. The processes for the production are varied depending on the type of alcohol and end product but all use a distillation process which involves the heating of liquids and subsequent condensation of vapors to purify or separate a substance contained in the original wood or grain product.

This classification excludes the manufacture of spirituous liquor which is to be reported separately in classification 3702 and gasohol distilling or refining which is to be reported separately in classification 3407.

3701-13 Polish, dressing, or ink: Manufacturing

Applies to establishments engaged in the manufacture of polish, dressings, or ink. Polish and dressing products include, but are not limited to, polish or dressings for shoes, leather, furniture, automobiles or metal. The ingredients and processes for polish and dressing manufacturing vary, depending on the end product. Typical ingredients include but are not limited to oils, waxes, resins, detergents, methanol, solvents, water and coloring. The process may involve a simple mixing operation or a more involved process involving heating or cooking and molding into a cake or stick form. Typical equipment includes, but is not limited to, weighing and measuring scales, mixers, stoves, molding apparatus, automatic filling, labeling, wrapping and packaging machines. Ink manufacturing covers all types of ink including, but not limited to, newspaper, book, magazine, and writing ink. The process involves the cooking of oils and resins which produces a resin. Pigments and dryers are blended into the resin mixture and diluted to proper consistency.

This classification excludes the manufacture of candles, crayons, and adhesives which is to be reported separately in classification 3701-25.

3701-14 Extract: Manufacturing, including distillation of essential oils

Applies to establishments engaged in the manufacture of extract including the distillation of essential oils. Extracts are concentrated forms of an essential component of a food or a plant. Extracts include, but are not limited to, flavorings, perfume oils, sachet powders, ingredients for skin conditioners and hop extracts used in the brewing of beer. The process involves extracting flavorings or oils from various plants, herbs or fruit peelings by pressing, cooking, steaming or distillation. The extracts may be mixed or blended with other extracts for strength, consistency or color and are then bottled or canned. Typical equipment includes, but is not limited to, steam cookers, presses, distillation apparatus, filters, grinders, tanks, vats and filling, packaging and labeling machines.

This classification excludes perfume manufacturing which is to be reported separately in classification 3701-15; mint distilling which is to be reported separately in classification 3701-17; and hop pellet manufacturing which is to be reported separately in classification 2101.

3701-15 Perfume: Manufacturing, including distillation of essential oils

Applies to establishments engaged in the manufacture of perfumes including the distillation of essential oils. Perfumes may be used as a personal fragrance or by other manufacturers such as in the making of scented candles. The process typically involves the distillation, cooking, grinding, compounding, drying, blending, or liquidizing of ingredients. These ingredients may include, but not be limited to, extracts, oils, colors and binders.

This classification excludes the manufacture of candles which is to be reported separately in classification 3701-25.

3701-17 Mint distilling

Applies to establishments engaged in the distillation of mint. The process may begin with mint oil that is purchased from others or with the distillation of the mint leaves into mint oil. The mint leaves are chopped and blown into a mint steamer which lifts the moisture and oils from the mint. The resultant steam then goes through a series of condensation lines. Water is added to force the oil to the top of the liquid. The mint oil is heated for purification and to lessen the fragrance. Various mint oils may then be blended together to produce different types such as spearmint and peppermint. The product is then packaged in stainless steel or epoxy lined barrels.

This classification excludes the raising and harvesting of mint which is to be reported separately in classification 4811.

3701-20 Salt, borax or potash producing or refining

Applies to establishments engaged in the production of or refining of salt, borax or potash. This classification includes the manufacture of common salt used in chemical and food processing, borax which is used in the manufacture of glass, glazes, soap, and boric acid, and potash which is used in fertilizer. Salt ores received from others are dissolved in water to produce a brine of the desired concentration. It is

refined into common salt by adding caustic soda and soda ash. Potash is refined by adding an amine to the brine which causes the salts to float to the surface where they are skimmed off. Borax is made by separating it from the potash by a rapid cooling process. All three of these products are then fully evaporated by heating in a partial vacuum to produce crystals or granules which are then dried.

This classification excludes the production of raw materials used in the manufacture of these products.

3701-21 Serum, antitoxin or virus: Manufacturing

Applies to establishments engaged in the manufacture of serums, antitoxins, or viruses. The process involves considerable microscopic laboratory work as well as working with animals. The animals are injected with bacteria and viruses, periodically bled and eventually killed. The killing of the animals is included in this classification as it is incidental and necessary to perform the operation to extract the serum from the glands and to separate the red blood cells from the blood.

This classification excludes the manufacture of other drugs or medicines which are to be reported separately in classification 3701-09.

3701-22 Paint, varnish or lacquer: Manufacturing

Applies to establishments engaged in the manufacture of paint, varnish, lacquer, enamel, shellac, paint removers and thinners. The paint manufacturing process involves a series of mixing and grinding operations. The pigments (solids) are then blended with oils or resins (liquids). A paint extender may also be added at this point. The paint is then pumped into filling machines where various sized containers are filled and then labeled. Lacquer, varnish, enamel, shellac and paint removers and thinners vary in the ingredients used but the process is similar to that of paint manufacturing in that it is mainly a mixing operation. Varnishes involve a cooking process which is generally not used in the manufacture of the other products included in this classification.

This classification excludes the production of raw materials used in the manufacture of these products.

3701-23 Putty or synthetic resin: Manufacturing

Applies to establishments engaged in the manufacture of putty or synthetic resin. Putty is a finely powdered chalk mixed with linseed oil. The main ingredients for both putty and synthetic resins are ground chalk, limestone and/or calcite. The process for both products involves grinding and mixing operations.

This classification excludes the production of the raw materials used in the manufacture of these products.

3701-25 Candle, crayon, and paste or glue: Manufacturing

Applies to establishments engaged in the manufacture of candles, crayons, and synthetic adhesives such as paste or glue. Raw materials used for making candles include, but are not limited to, beeswax, paraffin, stearin, wicks and colors which are received from others. The wax is heated in kettles or similar devices into which the wicks are dipped either by hand or by dipping equipment which can be either manual or automated. A fragrance may be added to the melted wax for scented candles. When the wax has attained the desired shape and size it is hung on lines to dry. The wicks are then cut and the candles are placed in molds to shape the base of the candle. Color is then added by dipping either by hand for specialized designs or by machine for solid colors. The candles are then inspected, wrapped, packaged and labeled. Crayons use the same ingredients that are used in making candles with the exception of the wicks. The type of wax used in making crayons determines the hardness. The wax is melted in a kettle or similar device and poured into molds for shaping and cooling. The crayons are then inspected, packaged and labeled. Synthetic paste or glue is made from powder or granule arabic gum or modified starch which is received from others along with preservatives and the containers and caps. The process involves mixing and cooking the ingredients in steel tanks and pumping the product to a filling area where it is packaged, labeled and capped.

This classification excludes the manufacture of polish, dressing, or ink which is to be reported separately in classification 3701-13; the manufacture of glue from animal substances which is to be reported separately in classification 4301; and the production of raw materials used in the manufacture of these products.

3701-27 Hazardous/toxic material: Repackaging for disposal

Applies to establishments engaged in *identifying and repackaging* hazardous/toxic materials for disposal. This classification is distinguished from classification 4305-20, in that classification 3701-27 applies to the *identifying and repackaging for disposal* of such materials as drugs, pesticides, chemicals, and toners that contain toxic or hazardous materials, while classification 4305-20 includes the *processing or handling* of such materials as medical or septic tank waste, drug lab or hazardous spill *cleanup,* and *reprocessing or handling* of low-level radioactive materials. For handling hazardous or toxic materials, the workers are equipped with protective clothing such as long sleeved shirts, depending on the material to which they will be exposed. They may also be equipped with steel toed boots, protective gloves, safety glasses and various types of respirator equipment. On a typical project, the first step is to visually inspect the materials to see if they appear to be the materials described on a job order. If there is a question of identity, a sample of the material is sent to a lab for analysis. The establishment may have its own lab facilities or the sample may be sent to an outside lab, or the customer may have it analyzed. Every component of the sample must be identified. Once the material has been identified, and all containers labeled, the containers are separated into appropriate groupings. Smaller containers of similar types of materials are packed into 55 gallon drums with plastic or other cushioning protective material to prevent breakage. All necessary paper work and forms required by various government agencies must be completed before the material can be transported to a disposal site.

This classification excludes hazardous/toxic material *processing or handling,* including processing of medical or septic tank waste, drug lab or hazardous spill cleanup; reprocessing or handling of low-level radioactive materials which is to be reported separately in classification 4305-20; and the replacement of nontoxic toner in cartridges used in business machines which is to be reported separately in classification 4107.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-4601 Classification 4601.

WSR 10-20-135
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed October 5, 2010, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-102.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive, chapter 296-104 WAC.

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on November 17, 2010, at 10:00 a.m.

Date of Intended Adoption: November 30, 2010.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by 5:00 p.m. on November 17, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott by November 1, 2010, yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make clarification and technical changes to the Board of boiler rules—Substantive, chapter 296-104 WAC, based on actions and requests of the board of boiler rules. The changes will:

- Add a definition of a "pool heater" to eliminate confusion for inspectors, owner/users, manufacturers and installers regarding what units are acceptable for service by the jurisdiction.
- Adopt the 2010 edition of the ASME Boiler and Pressure Vessel Code.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW and chapter 90, Laws of 2009 (HB 1366).

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of boiler rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor and/or they are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule for clarification (see RCW 19.85.025 referencing RCW 34.05.-310(4) and 34.05.328 (5)(b)(vi)).

October 5, 2010
Robert Olson, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 10-06-049, filed 2/24/10, effective 4/1/10)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."

"Boilers and/or unfired pressure vessels" - below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements and appropriately marked by an inspector.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the

system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:

* Pressure of 160 psi (1100 kpa);
* Temperature of 210 degrees F (99°C).

Additional requirements:

* Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
* Hot water heaters exceeding 200,000 ((~~BTU~~)) Btu/hr (58.58 kw) input must be ASME code stamped.

- **"Low pressure boiler"** shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:

* Fired process tubular heaters;
* Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
* Piping whose primary function is to transport fluids from one location to another;
* Those vessels defined as low pressure heating boilers or power boilers.

- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and

handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing and boarding homes.

"Pool heaters" shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.

(a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 KW) or less shall be manufactured and certified to ANSI Z21.56, UL 1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.

(b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.

(c) Pool heaters open to the atmosphere are excluded.

"Special design" shall mean a design using nationwide engineering standards other than the codes adopted in WAC 296-104-200 or other than allowed in WAC 296-104-230.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, ((~~2007~~)) 2010 edition, with addenda Sections I, III, IV, VIII, Division 1, 2, 3, X, XII;

(2) ASME PVHO-1 2007 Safety Standard for Pressure Vessels for Human Occupancy; and

(3) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory on issue and that subsequent addenda become mandatory six months after the date of issue. For nuclear systems, components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

WSR 10-20-136
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 5, 2010, 11:31 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 246-272 WAC, Wastewater and reclaimed water use fees, consolidating the on-site sewage system additives fee.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98504-7824, on November 9, 2010, at 10:30 a.m.

Date of Intended Adoption: November 9, 2010.

Submit Written Comments to: Brandy Brush, 111 Israel Road S.E., P.O. Box 47824, Olympia, WA 98504-7824, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2257, by November 9, 2010.

Assistance for Persons with Disabilities: Contact Brandy Brush by November 2, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Move the on-site sewage system additive fees (WAC 246-272-990) into the consolidated fees chapter 246-272 WAC, Wastewater and reclaimed water use fees.

Reasons Supporting Proposal: The proposed consolidation of fees improves clarity and usability of the rules without changing the fee amounts.

Statutory Authority for Adoption: RCW 43.70.110, 43.20B.020.

Statute Being Implemented: RCW 43.70.110, 43.20B.-020.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Stuart Glasoe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3246.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

October 5, 2010
Mary C. Selecky
Secretary

NEW SECTION

WAC 246-272-6000 On-site sewage system additive fees. (1) The applicant shall pay to the department, with the application, a three hundred fifty dollar fee. This fee includes two hundred dollars for developing criteria and review procedures, plus one hundred fifty dollars for up to two hours of product-specific review. Additional review time will be billed at seventy-five dollars per hour.

(2) All fees must be paid prior to the department's approval.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-273-990 Fees.

WSR 10-20-137
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 5, 2010, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-188.

Title of Rule and Other Identifying Information: Chapter 246-274 WAC, creating a new chapter for greywater reuse for subsurface irrigation.

Hearing Location(s): Washington State Department of Health, Town Center 1, Room 163, 101 Israel Road S.E., Tumwater, WA 98501, on November 15, 2010, at 1:00.

Date of Intended Adoption: December 10, 2010.

Submit Written Comments to: Lilia Lopez, Washington State Department of Health, Division of Environmental Health, 111 Israel Road, P.O. Box 47820, Tumwater, WA 98501, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2250, by November 15, 2010.

Assistance for Persons with Disabilities: Contact Holly Calvert, (360) 236-3347, by November 1, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to establish requirements that provide building owners with simple, cost-effective options for reusing greywater for subsurface irrigation. The rule is intended to protect public health and water quality and encourage water conservation.

Reasons Supporting Proposal: The reclaimed water statute, under RCW 90.46.015, requires adoption of the rule for greywater reuse.

Statutory Authority for Adoption: RCW 90.46.015.

Statute Being Implemented: RCW 90.46.015.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule will be implemented and enforced by local health jurisdictions.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Lilia Lopez, 111 Israel Road, Tumwater, WA 98501, (360) 236-3071; Implementation and Enforcement: Lynn Schneider, 111 Israel Road, Tumwater, WA 98501, (360) 236-3379.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry. The proposed rule does not impose requirements on any particular industry in Washington.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lilia Lopez, Washington State Department of Health, Division of Environmental Health, 111 Israel Road, P.O. Box 47820, Tumwater, WA 98501, phone (360) 236-3071, fax (360) 235-2250, e-mail lilia.lopez@doh.wa.gov.

October 5, 2010
Mary C. Selecky
Secretary

Chapter 246-274 WAC

GREYWATER REUSE FOR SUBSURFACE IRRIGATION

NEW SECTION

WAC 246-274-001 Purpose—Intent. (1) The purpose of this chapter is to establish requirements that provide building owners with simple, cost-effective options for reusing greywater for subsurface irrigation.

(2) This chapter is intended to encourage water conservation and to protect public health and water quality.

NEW SECTION

WAC 246-274-003 Applicability. (1) This chapter applies to greywater irrigation systems with design flows under three thousand five hundred gallons per day.

(2) This chapter does not apply to the reuse of greywater inside buildings regulated under the Uniform Plumbing Code as adopted in chapter 51-56 WAC.

(3) This chapter does not apply to reclaimed water use facilities regulated under chapters 90.46 RCW and 173-219 WAC.

NEW SECTION

WAC 246-274-005 Other applicable requirements. (1) Greywater reuse must comply with all applicable local ordinances and codes, and state statutes and regulations including, but not limited to, the Uniform Plumbing Code, as adopted in chapters 51-56 and 51-57 WAC.

(2) For buildings using an on-site sewage system, the use of a greywater irrigation system does not change the design, capacity, or reserve area requirements, or any other requirement applicable to on-site sewage systems under RCW 43.20.050, chapters 70.118B RCW, or 246-272A, 246-272B, or 246-272C WAC.

(3) The use of a greywater irrigation system does not serve as an alternative to the use of an approved on-site sewage system or connection to an approved public sewer for greywater disposal at any building, including buildings using waterless toilets.

NEW SECTION

WAC 246-274-007 Administration. (1) The local board of health and local health officer shall implement this chapter under authority of chapters 70.05, 70.08 and 70.46 RCW, as applicable, no later than three years after the effective date of this chapter. During the period of time that a local board of health does not implement this chapter, the provisions of chapter 246-272A WAC shall apply to greywater reuse for subsurface irrigation in that jurisdiction.

(2) If a local board of health is unable to adjust its resources to implement and enforce this chapter in accordance with subsection (1) of this section, the provisions of chapter 246-272A WAC shall continue to apply to greywater reuse for subsurface irrigation in that jurisdiction.

(3) The local board of health is authorized to establish fees under RCW 70.05.060 and the local health officer is authorized to collect fees under RCW 70.05.070 to implement this chapter.

(4) Nothing in this chapter prohibits the adoption and enforcement of more stringent regulations by a local board of health.

NEW SECTION

WAC 246-274-009 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Evapotranspiration rate" means the sum total of plant transpiration, evaporation off of the soil surface, and water used for plant growth.

(2) "Failure" means a condition of a greywater system or component that threatens the public health by creating a potential for contact between greywater and the public. Examples of failure include:

(a) Greywater on the surface of the ground;

(b) Greywater leaking from a storage tank;

(c) Inadequately treated greywater reaching ground water or surface water;

(d) Noncompliance with the installation permit; or

(e) Other noncompliance with the requirements of this chapter, as determined by the local health officer.

(3) "Green roof" means a roof of a building that is partially or completely covered with soil and vegetation.

(4) "Greywater" means domestic type flows from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen or utility sinks. Greywater does not include flow from a toilet or urinal.

(a) "Light greywater" means flows from bathtubs, showers, bathroom sinks, washing machines, and laundry-utility sinks.

(b) "Dark greywater" means flows from dishwashers, kitchen and nonlaundry utility sinks alone or in combination with light greywater.

(5) "Greywater irrigation system" or "system" means an integrated system of components located on the property it serves, or on nearby property where it is legally allowed to be used, that conveys greywater from the residence or other building where it originates and provides subsurface irrigation of plants during the growing season.

(6) "Growing season" means the period of time between the last frost of spring and the first frost of autumn, when annual plants die and biennials and perennials cease active growth and become dormant. The growing season may be extended with the use of a greenhouse so long as the plants irrigated within the greenhouse continue active growth.

(7) "Large on-site sewage system" means an on-site sewage system with design flows of between three thousand five hundred gallons per day and one hundred thousand gallons per day.

(8) "Local board of health" means a board created under chapter 70.05, 70.08, or 70.46 RCW.

(9) "Local health officer" means the person appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or a representative authorized by and under the direct supervision of the local health officer.

(10) "Mulch" means a protective covering for establishing a vegetative landscape that is spread or left on the ground to reduce evaporation, maintain even soil temperature, reduce erosion, control weeds, or enrich the soil.

(11) "Nonresidential building" means a building that is used for commercial or other nonresidential purposes.

(12) "On-site sewage system" means an integrated system of components located on or nearby the property it serves that conveys, stores, treats, and/or provides subsurface soil treatment and dispersal of sewage. It consists of a collection

system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage system also refers to a holding tank sewage system or other sewage system that does not have a soil dispersal component.

(13) "Plant factor" means a number which represents the approximate portion of evapotranspiration used by a plant species.

(14) "Pressure distribution" means a system of small diameter pipes equally distributing greywater.

(15) "Proprietary treatment product" means a greywater treatment technology, method, or material, subject to a patent or trademark that functions to treat greywater generated by residential or nonresidential buildings.

(16) "Public sewer system" means all facilities used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial wastewater. A public sewer system may also be known as a sanitary sewer system.

(17) "Qualified professional" means an on-site sewage treatment system designer licensed under chapter 18.210 RCW or a professional engineer licensed under chapter 18.43 RCW who is knowledgeable in irrigation system design.

(18) "Residential building" means a building used as a residence including single-family residences and multi-family residences.

(19) "Restrictive layer" means a stratum impeding the vertical movement of water, air, and growth of plant roots, such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock and unstructured clay soils.

(20) "Single-family residence" means one single-family house that is not used for commercial or other nonresidential purposes.

(21) "Subsurface irrigation" means applying greywater below the surface of the ground directly into the plant root zone.

(22) "Suitable soil" means unsaturated soil above the seasonally high water table and any restrictive layer in which the movement of water, air, and growth of roots is sustained to support healthy plant life and conserve moisture.

(23) "Tier 1 greywater irrigation system" means a light greywater irrigation system with maximum design flows of sixty gallons per day serving a single-family residence. A Tier 1 system serves a single-family residence connected to an approved public sewer system or on-site sewage system.

(24) "Tier 2 greywater irrigation system" means a light greywater irrigation system serving a residential or nonresidential building. A Tier 2 system only serves a building connected to an approved public sewer system or large on-site sewage system, except as provided in WAC 246-274-200 (1)(e).

(25) "Tier 3 greywater irrigation system" means a light or dark greywater irrigation system serving a residential or nonresidential building and using a treatment component. A Tier 3 system only serves a building connected to an approved public sewer system or large on-site sewage system, except as provided in WAC 246-274-300 (3)(e).

(26) "Treatment component" means a technology that treats greywater according to WAC 246-274-400 in preparation for subsurface irrigation of plants.

(27) "Vector" means an animal including, but not limited to, an insect, a rodent, or a bird, which is capable of transmitting an infectious disease from one organism to another.

NEW SECTION

WAC 246-274-011 Greywater irrigation systems—General requirements. (1) The following conditions and restrictions apply to all tiers of greywater irrigation systems:

(a) The greywater must be used only for subsurface irrigation.

(b) The greywater may be used for subsurface irrigation of plants that produce food but must not come into contact with edible portions of any plant.

(c) The greywater must consist of domestic type flows having the consistency and strength typical of greywater from domestic households.

(d) The greywater may not contain toxic substances, cleaning chemicals or hazardous household products derived from the waste from a water softener, activities such as cleaning car parts, washing greasy or oily rags or clothing, rinsing paint brushes, or disposing of waste solutions from home photo labs or similar hobbyist or home occupation activities, or from home maintenance activities.

(e) The greywater may not contain water used to wash diapers or similarly soiled or infectious materials.

(f) The greywater may not contain biomedical waste as defined in chapter 70.95K RCW.

(g) The greywater may not surface in any way, including through ponding or runoff. It must remain below the surface of the ground so that people and animals do not come into contact with it.

(h) The greywater must be used and contained within the property boundary of the building it originates from or on nearby property where it is legally allowed to be used.

(i) The system may be used only during the growing season.

(j) The system must be located in suitable soil.

(k) The system must be located where the land is stable.

(l) The system may not be located in an environmentally sensitive area, as determined by the local health officer.

(m) The irrigation rates may not be greater than the evapotranspiration rate of the irrigation field.

(n) The system must include a readily accessible diversion valve so the greywater can be directed into the approved public sewer system or on-site sewage system when necessary; for example, when soils are saturated or frozen, or blockage, plugging, or backup of the system occurs, or the maximum allowed gallons per day is reached, or when the building owner chooses not to use the system.

(o) The diversion valve must be visibly labeled.

(p) Pipes and above-ground tanks must be labeled with the words: "CAUTION: NONPOTABLE WATER, DO NOT DRINK."

(q) If mulch is used, it must be permeable enough to allow rapid infiltration of greywater.

(2) The location of the system must meet the minimum horizontal setback requirements established in WAC 246-274-405, Table I.

(3) If the system fails or is suspected of failing, the owner shall immediately divert the greywater to the approved public sewer system or on-site sewage system serving the building as required under WAC 246-274-445.

NEW SECTION

WAC 246-274-100 Tier 1 greywater irrigation systems. (1) The following conditions and restrictions apply to each Tier 1 greywater irrigation system:

(a) The greywater must be light greywater.

(b) The total flow of greywater must be sixty gallons per day or less.

(c) The greywater must originate from a single-family residence.

(d) The single-family residence must be served by an approved public sewer system or on-site sewage system.

(e) The greywater must be diverted to the subsurface irrigation system through a single diversion point. Flows from fixtures located close enough to each other to be diverted through a single diversion point may be combined.

(f) The greywater must be delivered through the irrigation system by gravity distribution. Pumps may not be used to convey the greywater.

(g) The greywater may not be stored.

(h) The total minimum irrigation area available to receive the greywater must be adequate based on a calculation of:

(i) The estimated volume of greywater;

(ii) The evapotranspiration rate in inches per week for the geographic area of the state where the landscape or garden is located; and

(iii) The water requirements of the plants, known as a plant factor. A "Greywater System Checklist and Irrigation Area Estimation Tool" is available from the Washington state department of health's web site.

(i) The greywater must be distributed throughout the irrigation area.

(j) The homeowner may direct greywater to separate irrigation fields so long as the total flow of greywater to all fields combined does not exceed sixty gallons per day.

(k) The Tier 1 system must be covered by at least four inches of appropriate material which may include suitable soil or other material such as mulch, humus, or compost. If material other than suitable soil is used, the irrigation field cover must be augmented periodically as needed to maintain adequate cover during the growing season.

(l) The homeowner shall ensure that the Tier 1 system is properly operated and maintained.

(m) The homeowner shall maintain a record of the Tier 1 system that:

(i) Shows the location of the system;

(ii) Identifies the fixture(s) that are the source of the greywater;

(iii) Describes the system design and how it meets the requirements of WAC 246-274-100;

(iv) Describes the system's maintenance requirements; and

(v) Includes the calculation of the total minimum irrigation area required under subsection (h) of this section.

(n) The homeowner shall maintain the record of the system on a completed "Greywater System Checklist and Irrigation Area Estimation Tool."

(2) A homeowner may install and use a maximum of two separate Tier 1 systems, with combined flows of one hundred twenty gallons per day or less, to allow for reuse of greywater originating from two separate diversion points. The total flow of greywater to the irrigation field or fields used by each system must not exceed sixty gallons per day.

(3) The local health officer may require the homeowner to register the Tier 1 greywater system(s) by filing the record, required in subsection (1)(m) of this section, with the local health jurisdiction. He or she may require additional review when two separate systems are installed or if the property is served by an on-site sewage system with design flows of less than three thousand five hundred gallons per day.

(4) The owner shall comply with any more stringent regulations adopted by the local health jurisdiction including design and permitting requirements.

NEW SECTION

WAC 246-274-200 Tier 2 greywater irrigation systems. (1) The following conditions and restrictions apply to Tier 2 greywater irrigation systems:

(a) The greywater must be light greywater.

(b) The total flow of greywater must be less than three thousand five hundred gallons per day.

(c) The greywater may originate from a residential or nonresidential building.

(d) The building must be served by an approved public sewer system or large on-site sewage system, except as provided in subsection (e) of this section.

(e) If the building is served by an approved on-site sewage system with design flows of less than three thousand five hundred gallons per day, the greywater must originate from a single-family residence and the total flow of greywater must not exceed three hundred gallons per day. If the building is something other than a single-family residence, the local health officer may allow the use of a Tier 2 system if he or she determines that applicable requirements can be met.

(f) Application of the greywater to the plants must be even throughout the irrigation field. This is typically achieved through pressure distribution.

(g) If the greywater is stored, it may not be stored for more than twenty-four hours.

(h) Warning signs must be visible at each fixture from which greywater is diverted at a nonresidential building. The signs must notify the employees and the public that water from the fixture is reused for subsurface irrigation of plants and that chemicals and other hazardous materials may not be poured down the drain.

(i) The owner shall maintain a record of the Tier 2 system that:

(i) Shows the location of the system;

(ii) Identifies the fixture(s) that are the source of the greywater;

(iii) Describes the design of the system and how it meets the requirements of WAC 246-274-410 and 246-274-415;

(iv) Identifies the person responsible for designing the system;

(v) Describes the maintenance requirements of the system; and

(vi) Includes an estimated calculation of the total irrigation area pursuant to WAC 246-274-415 (1) and (2).

(2) The owner shall obtain a permit, in accordance with WAC 246-274-425, from the local health officer before installing the system, except as provided in WAC 246-274-425 (2)(d).

NEW SECTION

WAC 246-274-300 Tier 3 greywater irrigation systems. (1) A Tier 3 greywater irrigation system is a system that uses a treatment component.

(2) A treatment component is required when the system:

(a) Reuses dark greywater;

(b) Involves storage of greywater for more than twenty-four hours;

(c) Irrigates a green roof;

(d) Serves a high public exposure area such as a playground or sports field; or

(e) Is otherwise deemed by the local health officer to require treatment to protect public health or water quality.

(3) The following conditions and restrictions apply to Tier 3 systems:

(a) The greywater may be light or dark greywater.

(b) The total flow of greywater must be less than three thousand five hundred gallons per day.

(c) The greywater may originate from a residential or nonresidential building.

(d) The building must be served by an approved public sewer system or large on-site sewage system, except as provided in subsection (e) of this section.

(e) If the building is served by an approved on-site sewage system with design flows of less than three thousand five hundred gallons per day, the greywater must originate from a single-family residence and the total flow of greywater must not exceed three hundred gallons per day. If the building is something other than a single-family residence, the local health officer may allow the use of a Tier 3 system if he or she determines that applicable requirements can be met.

(f) Application of the greywater must be even throughout the irrigation field. This is typically achieved through pressure distribution.

(g) Warning signs must be visible at each fixture from which greywater is diverted at a nonresidential building. The signs must notify the employees and the public that water from the fixture is reused for subsurface irrigation of plants and that chemicals and other hazardous materials may not be poured down the drain.

(h) The owner shall maintain a record of the Tier 3 system that:

(i) Shows the location of the system;

(ii) Identifies the fixture(s) that are the source of the greywater;

(iii) Describes the design of the system and how it meets the requirements of WAC 246-274-410 and 246-274-415;

(iv) Identifies the person responsible for designing the system;

(v) Describes the maintenance requirements of the system; and

(vi) Includes an estimated calculation of the total irrigation area pursuant to WAC 246-274-415 (1) and (2).

(4) The building owner shall obtain a permit from the local health officer, in accordance with WAC 246-274-425, before installing the system.

NEW SECTION

WAC 246-274-400 Greywater reuse treatment technologies—Tier 3 greywater irrigation systems. (1) This section applies to treatment technologies for Tier 3 greywater irrigation systems.

(2) All proprietary greywater treatment products used to treat light greywater shall meet the requirements of NSF/ANSI Standard 350-1, 2010, of the National Sanitation Foundation International (NSF), "*Onsite Residential and Commercial Graywater Treatment Systems*."

(3) All proprietary treatment products used to treat dark greywater shall meet the requirements of NSF/ANSI Standard 40, 2009.

(4) All proprietary treatment products shall bear the NSF seal of approval indicating that the product meets the requirements of NSF Standard 350-1 or NSF Standard 40 as applicable.

(5) Public domain treatment technologies may be used to treat greywater if the department has developed recommended standards and guidance for the technologies.

NEW SECTION

WAC 246-274-405 Location. Tier 1, Tier 2, and Tier 3 greywater irrigation systems shall be designed and installed to meet the minimum horizontal setback requirements specified in Table I.

Table I
Minimum Horizontal Setbacks

	From edge of subsurface irrigation components	From tank and other system components
Building foundations		
Down-gradient[1]:	10 ft.	N/A
Up-gradient:	2 ft.	N/A
Property or easement line	2 ft.	2 ft.
Pressurized water supply line/public water main	10 ft.	10 ft.
Interceptor/ curtain drains/drainage ditches		
Down-gradient:	30 ft.	N/A

	From edge of subsurface irrigation components	From tank and other system components
Up-gradient:	10 ft.	N/A
In-ground swimming pool	10 ft.	5 ft.
Spring or surface water measured from the ordinary high-water mark[2]	100 ft.	50 ft.
Well or suction line	100 ft.	50 ft.
Public drinking water well	100 ft.	100 ft.
Public drinking water spring measured from the ordinary high-water mark	200 ft.	200 ft.
Decommissioned well (decommissioned in accordance with chapter 173-160 WAC)	10 ft.	N/A
Down-gradient cuts or banks with at least 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	25 ft.	N/A
Down-gradient cuts or banks with less than 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	50 ft.	N/A
On-site sewage system primary and reserve areas	10 ft.	N/A

[1] The item is down-gradient when liquid will flow toward it upon encountering a water table or a restrictive layer. The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.

[2] If surface water is used as a public drinking water supply, the greywater system must be located outside of the required source water protection area.

NEW SECTION

WAC 246-274-410 Design requirements—General—Tier 2 and Tier 3 greywater irrigation systems. (1) Tier 2 and Tier 3 greywater irrigation systems must be designed by a qualified professional, except:

(a) The local health officer may allow a resident owner of a single-family residence, not adjacent to a marine shoreline, to design a system for his or her residence when the system reuses no more than three hundred gallons per day of greywater; or

(b) The local health officer may design the system if he or she performs the soil and site evaluation.

(2) The person designing a Tier 2 or Tier 3 system must use the following criteria when developing the design:

(a) Storage and pump tanks must be:

(i) Constructed of solid, durable materials not subject to excessive corrosion or decay;

(ii) Water-tight;

(iii) Tamper proof and not susceptible to intrusion by humans or vectors;

(iv) Installed below ground on dry, level, well compacted soil or above ground on level, stable footing;

(v) Anchored to prevent overturning;

(vi) Provided with an overflow pipe with a diameter at least equal to that of the inlet pipe diameter that flows by gravity to the approved public sewer system or on-site sewage system with a check valve or backwater valve, as appropriate, that prevents backflow from sewer or septic tank; and

(vii) Provided with a drain pipe, with a diameter at least equal to that of the inlet pipe diameter, and a vent pipe.

(b) The operating capacity must be based on the estimated flows of greywater diverted from the approved public sewer or on-site sewage system.

(i) The total flow available may be estimated using the flow from each fixture multiplied by the number of people using the fixtures. The flow from each fixture is based on design flow of the fixture.

(ii) If the fixture's design flow is unknown, the following standards must be used:

Laundry:	Water conserving washing machine - 8 gallons per person per day
	Traditional washing machine - 11 gallons per person per day
	Laundry sink - 3 gallons per person per day
Bathroom:	Water conserving sink - 5.4 gallons per person per day
	Water conserving shower - 10 gallons per person per day
	Traditional sink - 6 gallons per person per day
	Traditional shower - 17 gallons per person per day
Bathtub:	24 gallons per bath
Kitchen sink:	6 gallons per person per day
Dishwasher:	1 gallon per person per day

(c) If the building is served by an on-site sewage system with design flows of less than three thousand five hundred gallons per day, the total flow of greywater diverted must not adversely affect the functioning of the on-site sewage system.

(d) The sensitivity of the site where the greywater irrigation system will be installed must be considered.

(i) Examples of sensitive sites include shellfish growing areas, designated swimming areas, designated wellhead protection areas for Group A public water systems, areas in which aquifers used for potable water as designated under the Growth Management Act, chapter 36.70A RCW, are critically impacted by recharge, and other areas identified by the

local management plan required in WAC 246-272A-0015, where fecal coliform constituents or other greywater constituents can result in public health or water quality concerns.

(ii) When the greywater irrigation system will be installed in an area that is not covered by a local management plan required in WAC 246-272A-0015, examples of sensitive sites include similar types of areas where greywater constituents can result in public health or water quality concerns.

(e) For greywater irrigation systems conveying greywater from a nonresidential source, documentation must be provided that:

(i) Shows the greywater consists only of domestic type flows and does not include any other type flows; and

(ii) Identifies how chemicals and other hazardous materials will be kept out of the greywater.

(3) The person designing the system shall ensure that the owner is provided with the record information required under WAC 246-274-200 (1)(i) and 246-274-300 (3)(h).

NEW SECTION

WAC 246-274-415 Design requirements—Irrigation field components—Tier 2 and Tier 3 greywater irrigation systems. Greywater irrigation fields for Tier 2 and Tier 3 systems must be designed to meet the following requirements:

(1) Calculation of the total irrigation area is based on:

(a) The operating capacity of the system; and

(b) Irrigation rates that are dependent on the plant factor and evapotranspiration rate.

(2) The total irrigation area shall be determined by using the following equation:

$$\text{Irrigation area (square feet)} = \frac{\text{Greywater volume (gallons per week) divided by}}{\text{Evapotranspiration x Plant Factor x 0.62}}$$

Where:

Evapotranspiration (ET)	=	The monthly average of May through September ET rates in inches divided by four, as determined by the Washington State University, *State of Washington Irrigation Guide*, 1985 (as amended 1990; 1992 for select western Washington crops), or weekly averages based on actual conditions;
Plant Factor	=	0 to 0.3 for low water use plants; 0.4 to 0.6 for average water use plants; and 0.7 to 1.0 for high water use plants;
0.62	=	The conversion factor (from inches of ET to gallons per week)

(a) This formula includes a factor of 1 for irrigation efficiency based on subsurface irrigation evenly distributed.

(b) The Washington State University, *State of Washington Irrigation Guide*, is available from the Washington state department of health's web site.

(c) The person designing the system may demonstrate to the satisfaction of the local health officer that adjustments to the values identified in this subsection are appropriate based on:

(i) Professional judgment; and

(ii) Applicable reference materials considering relevant factors such as water requirements of plants, density of plantings, microclimates of the site, irrigation efficiency of the system, and soil conditions.

(3) Irrigation rates must not exceed maximum allowable soil loading rates in Table II based on the finest textured soil in the lower twenty-four inches of suitable soil. The soil loading rate in Table II may be increased up to a factor of 2 for soil types 1-4 and up to a factor of 1.5 for soil types 5 and 6 when a treatment technology that meets the requirements of WAC 246-274-400 is used.

Table II
Soil Type Description and Maximum Hydraulic Loading Rate

Soil Type	Soil Textural Classification Description	Loading Rate for Greywater gal./sq. ft./day
1	Gravelly and very gravelly coarse sands, all extremely gravelly soils excluding soil types 5 and 6, all soil types with greater than or equal to 90% rock fragments.	Not suitable without augmentation 1.0 with augmentation
2	Coarse sands.	Not suitable without augmentation 1.0 with augmentation
3	Medium sands, loamy coarse sands, loamy medium sands.	0.8
4	Fine sands, loamy fine sands, sandy loams, loams.	0.6
5	Very fine sands, loamy very fine sands; or silt loams, sandy clay loams, clay loams, and silty clay loams with a moderate structure or strong structure (excluding a platy structure).	0.4
6	Other silt loams, sandy clay loams, clay loams, silty clay loams.	0.2

Soil Type	Soil Textural Classification Description	Loading Rate for Greywater gal./sq. ft./day
7	Sandy clay, clay, silty clay, and strongly cemented firm soils, soil with a moderate or strong platy structure, any soil with a massive structure, any soil with appreciable amounts of expanding clays.	Not suitable

(4) The subsurface irrigation components of the greywater irrigation system must be installed in suitable soil. The suitable soil may consist of original, undisturbed soil or original soil that is augmented.

(5) The subsurface irrigation components of the greywater irrigation system must be installed a minimum of four inches deep and no deeper than twelve inches below the finished grade. The four-inch cover layer must consist of two inches of suitable soil and two inches of mulch.

(6) There must be a minimum of twenty-four inches of suitable soil between the subsurface irrigation components of the greywater irrigation system and any restrictive layer or the highest water table during the growing season.

(7) If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is used:

(a) The mixture must have an organic content that is at least five percent to support plant life and increase soil structure, and no greater than ten percent to prevent excessive decomposition;

(b) The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

(c) The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

(8) If native soil is augmented, the additional soil must be tilled into the native soil a minimum of four inches.

(9) Soil types 1 and 2 must be augmented before use. Soil type 7 is not suitable for subsurface irrigation.

(10) The irrigation field may only be located on slopes of less than thirty percent, or seventeen degrees.

(11) Irrigation scheduling should incorporate the use of adjustment features so that application rates are closely matched with soil and weather conditions.

NEW SECTION

WAC 246-274-420 Soil and site evaluation—Tier 2 and Tier 3 greywater irrigation systems. (1) A soil and site evaluation is required for Tier 2 and Tier 3 greywater irrigation systems. Only qualified professionals or local health officers may perform soil and site evaluations. Soil scientists may perform soil evaluations.

(2) The local health officer may allow a resident owner of a single-family residence, not adjacent to a marine shoreline, to perform the evaluation for his or her residence when the system reuses no more than three hundred gallons per day of greywater.

(3) The person evaluating the soil and site shall:

(a) Ensure that the soil types of the site are properly identified, and will provide suitable soil capable of supporting healthy plant life.

(b) Determine texture, structure, compaction, and soil characteristics and classify the soil as in WAC 246-274-415, Table II.

(c) Use the soil names and particle size limits of the United States Department of Agriculture Natural Resources Conservation Service classification system.

(d) Provide a report to the local health officer that includes:

(i) A soil map showing the soils within the project site. If the original, undisturbed soil will be augmented with additional soil, include a description of the additional soil, how it will be tilled into the original soil, and how the resulting soil will meet the requirements of WAC 246-274-415(7);

(ii) The drainage characteristics of the site and those areas immediately adjacent to the site that contain characteristics impacting the design;

(iii) The existence of designated flood plains and other areas identified in the local management plan required in WAC 246-272A-0015; and

(iv) The location of existing features affecting system placement, including the items requiring setback, identified in WAC 246-274-405, Table I, and other features such as:

(A) Surface water and storm water infiltration areas;

(B) Abandoned wells;

(C) Outcrops of bedrock and restrictive layers;

(D) Driveways, parking areas, and other impervious surfaces;

(E) The approved on-site sewage system serving the building, if any; and

(F) Underground utilities.

NEW SECTION

WAC 246-274-425 Installation permit requirements—Tier 2 and Tier 3 greywater irrigation systems. (1) Before beginning the construction of a Tier 2 or Tier 3 greywater irrigation system, a person proposing the installation of the system shall provide information to, and obtain a permit to install from, the local health officer. The information provided must include:

(a) The following general information:

(i) Name and address of the property owner;

(ii) Parcel number and if available, the site address;

(iii) Identification of the approved public sewer system or on-site sewage system serving the property;

(iv) Size of the parcel;

(v) Name, signature, and stamp, if applicable, of the person responsible for designing the system;

(vi) Date of application;

(vii) Name and signature of the owner or the owner's authorized agent; and

(viii) Certification by the owner or owner's authorized agent that the greywater will not contain anything prohibited under WAC 246-274-011.

(b) The soil and site evaluation specified under WAC 246-274-420;

(c) A dimensioned site plan of the proposed irrigation field, including:

(i) General topography and slope;

(ii) The location of existing and proposed encumbrances affecting system placement, including legal access documents, if any component of the system is not on the lot where the greywater is generated.

(d) A description of how the design of the system meets the requirements of WAC 246-274-410 and 246-274-415, including location, type, and size of the irrigation system components;

(e) Flow rate in gallons per minute, application rates in inches per hour, and design operating pressure per square inch for each zone;

(f) Source of greywater (fixtures) and the location of the diversion valve; and

(g) Any additional information required by the local health officer.

(2) Local health jurisdiction review.

(a) The local health officer shall:

(i) Issue a permit when the information submitted under subsection (1) of this section meets the requirements contained in this chapter and in applicable local rules; and

(ii) Specify the permit expiration date on the permit.

(b) The local health officer may deny, modify, suspend, or revoke a permit for just cause. Examples include, but are not limited to:

(i) Construction or continued use of a greywater irrigation system that threatens public health or water quality;

(ii) Misrepresentation or concealment of material fact in information submitted to the local health officer; or

(iii) Failure to meet conditions of the permit, this chapter, or any applicable local rules.

(c) The local health officer may stipulate additional requirements for a particular permit if necessary for public health or water quality protection.

(d) The local health officer may reduce permitting requirements, or require registration instead of permitting, when a qualified professional designs a Tier 2 system for a single-family residence and the system reuses no more than three hundred gallons per day of greywater.

NEW SECTION

WAC 246-274-430 Installers—Tier 2 and Tier 3 greywater irrigation systems. (1) Only a person approved by the local health officer to install greywater irrigation systems may construct and install a Tier 2 or Tier 3 system.

(2) The local health officer may allow the resident owner of a single-family residence, not adjacent to a marine shoreline, to install the Tier 2 or Tier 3 system for his or her residence when the system reuses no more than three hundred gallons per day of greywater.

(3) The installer shall:

(a) Follow the approved design;

(b) Have the approved design in possession during installation;

(c) Make no changes to the approved design without the prior authorization of the person who designed the system and, if a permit is required, the local health officer; and

(d) Be on the site at all times during the excavation and construction of the system.

NEW SECTION

WAC 246-274-435 Installation inspection—Tier 2 and Tier 3 greywater irrigation systems. (1) For Tier 2 greywater irrigation systems that require an installation permit, and for Tier 3 greywater irrigation systems, the local health officer shall:

(a) Either inspect the system before cover or allow the person who designed the system to perform the inspection before cover if the designer is not also the installer of the system; and

(b) Keep the application submittal on file, with the approved design documents.

(2) The person responsible for the final construction inspection shall assure the system meets the approved design.

NEW SECTION

WAC 246-274-440 Operation and maintenance—Tier 2 and Tier 3 greywater irrigation systems. (1) The owner of a Tier 2 or Tier 3 greywater irrigation system is responsible for properly operating, monitoring, and maintaining the system as follows:

(a) Obtain approval from the local health officer before altering or expanding the system;

(b) Protect the greywater irrigation system from damage, including damage from surface drainage and direct drains, such as footing or roof drains. The drainage must be directed away from the area where the greywater system is located;

(c) Ensure that the greywater originates from the correct fixtures; and

(d) Provide maintenance and needed repairs to promptly return the system to proper operating condition or promptly divert the greywater to the approved public sewer system or on-site sewage system serving the building until the system is repaired.

(2) At the time of property transfer, the owner must provide to the buyer the record information required under WAC 246-274-200 (1)(i) or 246-274-300 (3)(h) and, if available, maintenance records, in addition to the completed seller disclosure statement in accordance with chapter 64.06 RCW for residential real property transfers.

(3) If the greywater system is abandoned or otherwise permanently removed, the owner shall notify the local health officer in writing.

NEW SECTION

WAC 246-274-445 Failures. If a Tier 1, Tier 2, or Tier 3 greywater irrigation system fails or a failure is suspected, the owner of the system shall immediately divert the greywater to the approved public sewer system or on-site sewage system serving the building. No person may use the greywater system until the failure is corrected.

NEW SECTION

WAC 246-274-450 Enforcement. (1) The local health officer shall enforce these rules and may initiate enforcement actions against the system owner or other person causing or responsible for the violation of these rules. Enforcement actions may include, but are not limited to, requiring a person to stop work on any greywater system, or to divert the greywater to the approved public sewer system or on-site sewage system serving the building, until all permits, approvals, and registrations required by rule or statute are obtained.

(2) Enforcement orders issued under this section shall be in writing and shall include the violation and the corrective action required, and the name, business address, and phone number of an appropriate staff person who may be contacted regarding the order.

(3) Enforcement orders shall be personally served in the manner of service of a summons in a civil action or in a manner showing proof of receipt.

NEW SECTION

WAC 246-274-455 Hearings. All local boards of health shall establish rules for conducting hearings requested to contest a local health officer's actions under this chapter. If the local board of health determines that the rules established under WAC 246-272A-0440 (1)(b) for conducting hearings to contest a local health officer's actions are adequate for this purpose, those rules may be used.

NEW SECTION

WAC 246-274-460 Waivers. The local health officer may grant a waiver from specific requirements of this chapter if he or she determines:

(1) That the waiver requested is the minimum deviation from the specific requirements of this chapter that is necessary for the conditions; and

(2) The alternative approach proposed by the person requesting the waiver is consistent with the requirements and intent of these rules.

NEW SECTION

WAC 246-274-465 Effective date. This chapter shall take effect on July 31, 2011.

WSR 10-20-140
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 5, 2010, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-116.

Title of Rule and Other Identifying Information: WAC 308-96A-550 Vehicle special collegiate license plates and 308-96A-560 Special license plates—Criteria for creation or continued issuance.

Hearing Location(s): Department of Licensing, Conference Room 303, 1125 Washington Street S.E., Olympia, WA 98507, on November 9, 2010, at 9:00 a.m. - 10:00 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Debra K. Then, P.O. Box 9037, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98501-9037, e-mail dthen@dol.wa.gov, fax (360) 902-3706, by November 5, 2010.

Assistance for Persons with Disabilities: Contact Debra K. Then by November 5, 2010, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to comply with E2SHB 2617 of the 61st legislature 2010 sp. sess. which eliminated the special license plate review board.

Reasons Supporting Proposal: Current language included the requirements of the special license plate review board. These requirements needed to be eliminated from the law due to the passage [of] E2SHB 2617 which eliminated the board.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.16.725, 46.16.745.

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

Name of Agency Personnel Responsible for Drafting: Debra K. Then, 1125 Washington Street S.E., Olympia, WA, (360) 902-4094; Implementation and Enforcement: Joann Davis, 1125 Washington Street S.E., Olympia, WA, (360) 902-0122.

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

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

October 5, 2010
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-08-079, filed 4/6/04, effective 5/7/04)

WAC 308-96A-550 Vehicle special collegiate license plates. (1) **What are the criteria for establishing collegiate license plates?** Application for license plate series from an institution of higher education under RCW 46.16.324 may be

submitted to the ((~~special license plate review board~~)) department through the process established in RCW 46.16.735 and 46.16.745. In addition the following criteria must be satisfied:

(a) The plates will consist of numbers, letters, colors and a symbol or artwork approved by the department ((~~and/or the special license plate review board~~)).

(b) The numbers and letters combination may not exceed seven positions.

(c) The plate series will not conflict with existing license plates.

(d) The plate design must provide at least four positions to accommodate serial numbering.

(e) The plate must not carry connotations offensive to good taste or decency, which may be misleading, vulgar in nature, a racial, ethnic, lifestyle or gender slur, related to illegal activities or substances, blasphemous, contrary to the department's mission to promote highway safety, or a duplication of other license plates provided in chapter 46.16 RCW.

(f) The plate must be designed so that it is legible and clearly identifiable by law enforcement personnel as an official Washington state issued license plate. A collegiate license plate design may not be issued in combination with any other license plate configuration including special, personalized or exempt license plate(s).

(2) **How is the design for a collegiate plate determined?** The institution of higher education must provide a design including color and dimension specifications of the logo requested on the special collegiate license plate series with their application. Design services may be purchased through the department. The design must be legible and clearly identifiable as a Washington state plate to be approved by the department, Washington state patrol, ((~~the special license plate review board~~)) and((~~/or~~)) the legislature.

(3) **Who may apply for the special collegiate license plate?** Upon receipt of all applicable fees, the special collegiate license plate will be issued to a registered owner of the vehicle.

(4) **When ownership of a vehicle issued collegiate license plates is sold, traded, or otherwise transferred, what happens to the plates?** The owner may relinquish the plates to the new vehicle owner or remove the plates from the vehicle for transfer to a replacement vehicle. If the plates are removed from the vehicle, a transfer fee to another vehicle shall be charged as provided in RCW 46.16.316(1).

(5) **Will any new fees be charged when the collegiate license plates are sold, traded, or otherwise transferred?** If the registration expiration date for the new vehicle exceeds the old vehicle registration expiration date, an abated fee for the collegiate plate will be charged at the rate of one-twelfth of the annual collegiate plate fee for each exceeding month and partial month. If the new registration expiration date is sooner than the old expiration date, a refund will not be made for the remaining registration period.

(6) **Will I be able to retain my current collegiate license plate number/letter combination if my plate is lost, defaced, or destroyed?** Yes. Upon the loss, defacement, or destruction of one or both collegiate license plates, the owner will make application for new collegiate or other license plates and pay the fees described in RCW 46.16.270 and 46.16.233 as applicable. See note following subsection (9) of this section.

(7) **Will I ever have to replace my collegiate license plate?** Yes, the collegiate license plates are subject to the seven-year vehicle license plate replacement schedule.

(8) **How does the department define "current license plate registration"?** For the purposes of this section, a current license plate registration is defined as: A registration that has not expired or a registration where it is less than one year past the expiration date.

(9) **When I am required to replace my collegiate license plate, will I receive the same license plate number/letter combination?** Yes. In addition to the license plate replacement fee, you may pay an additional plate retention fee to retain the same number/letter combination as shown on the current vehicle computer record as long as the plate meets a current approved license plate configuration and background.

Note: If the license plate(s) has been reported as stolen or if the department record indicates the plate has been stolen, the same number/letter combination will not be issued.

AMENDATORY SECTION (Amending WSR 08-22-067, filed 11/4/08, effective 12/5/08)

WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance. (1) **What is a special license plate series?** For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) **What is required for an organization to apply to create a new plate through the ((~~special license plate review board~~)) department?** The organization must submit a completed application packet, signature sheet and supporting documentation as required by law. Signature sheets must reflect that they are collected within three years of submission.

If an organization started collecting signature sheets before the moratorium was put into place that ends on July 1, 2009, they are exempt from the three-year time frame. However, organizations collecting signatures during the moratorium must submit their completed application packet and signature sheets ((~~at the next board meeting~~)) to the department within ninety days after the moratorium is lifted. If an organization does not submit the signature sheets ((~~at the board meeting following~~)) to the department within ninety days after the moratorium, the signature sheets are no longer valid.

(3) **What criteria are used to discontinue issuing special license plates?** A special license plate series may be canceled if:

(a) The department determines that fewer than five hundred special license plates are purchased annually and fewer than one thousand five hundred special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

(b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or

(c) The legislature concurs with a recommendation from the ((~~special license plate review board~~)) department to discontinue a plate series created after January 1, 2003; or

(d) The state legislature changes the law allowing that plate series.

(4) **What information must be contained in the annual financial report?** The annual financial report must include all expenditures related to programs, fund-raising, marketing, and administrative expenses related to their special license plate. The report must include:

(a) The stated purpose of the organization receiving the special plate revenue;

(b) A message from the chair or director of the organization;

(c) Program highlights with a detailed list of how the funds were expended for those programs;

(d) List of special events the organization held to market their special plate for the current reporting year;

(e) A summary of financial information:

(i) Previous revenue received during current reporting year;

(ii) Total revenue received during current reporting year;

(iii) Summary of administrative expenses.

If an organization is disbursing funds through a grant program or to another nonprofit organization supporting Washington citizens, a list including the program and the organizations must be submitted which includes their name and amount received.

(5) **What steps are taken by the department if the annual financial report is not submitted as required or the special plate revenue is expended for purposes other than allowed by law?** The department will follow the guidelines as established in the organization's contractual agreement with the department:

(a) Send a written notice of the violations to the organization;

(b) The organization is given thirty days to correct the violation;

(c) If the violation is not corrected, the department may immediately terminate the contract.

(6) **Can an organization have more than one special plate series?** No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special plate series may not have more.

An updated design of the current special license plates does not constitute more than one special plate series. The newest design supersedes the prior design. The assigned number and letter combination cannot be changed when a new plate design is created.

WSR 10-20-143
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed October 5, 2010, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-036.

Title of Rule and Other Identifying Information: The state board of education will amend Title 180 WAC for the purpose of fixing technical errors. The amendments will fix inaccurate references to statutes and rules that have developed due to repeals or amendments to those statutes and rules.

Hearing Location(s): New Market Skills Center, 7299 New Market Street S.W., Tumwater, WA 98501, http://newmarketskills.com, on November 9, 2010, at 11:35 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Brad Burnham, Washington State Board of Education, P.O. Box 47206, 600 Washington Street, Olympia, WA 98504-7206, e-mail brad.burnham@k12.wa.us, fax (360) 586-2357, by October 29, 2010.

Assistance for Persons with Disabilities: Contact Brad Burnham by October 29, 2010, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The state board of education is currently involved in a periodic review of its rules and has discovered a number of technical errors in multiple chapters of its rules. The state board of education will amend its rules for the purpose of fixing inaccurate references to statutes and rules that have developed due to repeals or amendments to those statutes and rules.

Statutory Authority for Adoption: Chapter 28A.305 RCW, RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, 28A.195.040.

Statute Being Implemented: Chapter 28A.305 RCW, RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, 28A.195.040.

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

Name of Proponent: Washington state board of education, governmental.

Name of Agency Personnel Responsible for Drafting: Brad Burnham, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6029; Implementation and Enforcement: Edie Harding, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6025.

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

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

September 20, 2010
Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

WAC 180-08-001 Purpose and authority. (1) The purpose of this chapter is to establish the formal and informal procedures of the state board of education relating to rules adoption, protection of public records, and access to public records.

(2) The authority for this chapter is RCW 34.05.220 and ((~~42.17.250 through 42.17.348~~)) chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

WAC 180-08-004 Definitions. (1) As used in this chapter, "public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the state board of education, regardless of physical form or characteristics. Personal and other records cited in RCW ((~~42.17.310~~)) 42.56.210 are exempt from the definition of public record.

(2) As used in this chapter, "writing" means handwriting, typewriting, printing, photostating, photographing, use of facsimile and electronic communication, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, disks, drums, diskettes, sound recordings, and other documents including existing data compilations from which data may be obtained or translated.

(3) The state board of education shall hereafter be referred to as the "board" or "state board."

AMENDATORY SECTION (Amending WSR 06-23-007, filed 11/2/06, effective 12/3/06)

WAC 180-08-006 Public records officer—Access to public records—Requests for public records—Determination regarding exempt records—Review of denials of public record requests—Protection of public records—Copying—Office hours. (1) The state board's public records officer shall be the board's secretary (executive director) located in the administrative office of the board located in the Old Capitol Building, 600 South Washington, Olympia, Washington 98504-7206. The secretary (executive director) shall be responsible for implementation of the board's rules and regulations regarding release of public records and generally ensuring compliance by staff with the public records disclosure requirements in chapter ((~~42.17~~)) 42.56 RCW.

(2) Access to public records in the state board of education shall be provided in compliance with the provisions of RCW ((~~42.17.260~~)) 42.56.070.

(3) Requests for public records must comply with the following procedures:

(a) A request shall be made in writing to the secretary (executive director) or designee of the director. The request may be brought to the administrative office of the board during customary office hours or may be mailed, delivered by facsimile, or by electronic mail. The request shall include the following information:

(i) The name of the person requesting the record;

(ii) The time of day and calendar date on which the request was made;

(iii) The nature of the request;

(iv) If the matter requested is referenced within the current index maintained by the secretary (executive director), a reference to the requested information as it is described in such current index;

(v) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested shall be provided.

(b) In all cases in which a member of the public is making a request, it shall be the obligation of the secretary (executive director), or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested.

(4)(a) The board reserves the right to determine that a public record requested in accordance with subsection (3) of this section is exempt under the provisions of RCW ((~~42.17.310 and 42.17.315~~)) 42.56.210. Such determination may be made in consultation with the secretary (executive director) or an assistant attorney general assigned to the board.

(b) Pursuant to RCW ((~~42.17.260~~)) 42.56.070, the board reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy: Provided, however, In each case, the justification for the deletion shall be explained fully in writing.

(c) Response to requests for a public record must be made promptly. Within five business days of receiving a public record request, the executive director shall respond by either:

(i) Providing the record;

(ii) Acknowledging that the board has received the request and providing a reasonable estimate of the time required to respond to the request; or

(iii) Denying the public record request.

(d) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the executive director may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request within five working days of being asked for said clarification, the executive director need not respond to it.

(5) All denials of request for public records must be accompanied by a written statement, signed by the secretary (executive director) or designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.

(6)(a) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.

(b) The written request by a person petitioning for prompt review of a decision denying a public record shall be submitted to the board's secretary (executive director) or designee.

(c) Within two business days after receiving a written request by a person petitioning for a prompt review of a deci-

sion denying a public record, the secretary (executive director) or designee shall complete such review.

(d) During the course of the review the secretary (executive director) or designee shall consider the obligations of the board to comply fully with the intent of chapter ((~~42.17~~)) 42.56 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW ((~~42.17.310 through 42.17.315~~)) 42.56.210 and 42.56.510, and the provisions of the statute which require the board to protect public records from damage or disorganization, prevent excessive interference with essential functions of the board, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

(7) Public records and a facility for their inspection will be provided by the secretary (executive director) or designee. Such records shall not be removed from the place designated for their inspection. Copies of such records may be arranged for according to the provisions of subsection (8) of this section.

(8) No fee shall be charged for the inspection of public records. The board may impose a charge for providing copies of public records and for the use by any person of agency equipment to copy public records. Copying charges shall be reasonable and conform with RCW ((~~42.17.300~~)) 42.56.120. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

(9) Public records shall be available for inspection and copying during the customary office hours of the administrative office of the board. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays and dates of official state board of education business requiring all board staff to be away from the office.

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

WAC 180-08-008 Administrative practices regarding hearings and rule proceedings. (1) Administrative practices before and pertaining to the state board of education are governed by the state Administrative Procedure Act, chapter 34.05 RCW, the Washington State Register Act, chapter 34.08 RCW, and the Office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of "agency action"; the conduct of "adjudicative proceedings"; and "rule making" as these terms are defined in RCW 34.05.-010.

(2) The rules of the state code reviser (currently set forth in chapter((~~s 1-08 and~~)) 1-21 WAC) and the rules of the office of administrative hearings (currently set forth in chapter 10-08 WAC) shall govern procedures and practices before the state board of education for the following: Petitions for declaratory rulings; petitions for adoption, amendment, or repeal of a rule; and the conduct of adjudicative proceedings. All other regulatory actions and hearings conducted by the state board of education may be conducted informally at the discretion of the state board of education.

AMENDATORY SECTION (Amending WSR 02-18-053, filed 8/28/02, effective 9/28/02)

WAC 180-16-162 Strike defined—Presumption of approved program operation—Strikes—Exception—Approval/disapproval of program during strike period—Work stoppages and maintenance of approved programs for less than one hundred eighty days not condoned. (1) Strike defined. For the purpose of this section the term "strike" shall mean: A concerted work stoppage by employees of a school district of which there has been a formal declaration by their recognized representative and notice of the declaration has been provided to the district by the recognized representative at least two calendar school days in advance of the actual stoppage.

(2) Presumption of approved program. It shall be presumed that all school days conducted during a school year for which the state board of education has granted annual program approval are conducted in an approved manner, except for school days conducted during the period of a strike. The following shall govern the approval or disapproval of a program conducted during the period of a strike:

(a) Upon the submission of a written complaint of substandard program operation by a credible observer, the state superintendent of public instruction may investigate the complaint and program being operated during the strike.

(b) The district's program shall be deemed disapproved if the investigation of the state superintendent establishes a violation of one or more of the following standards or, as the case may be, such deviations as have been approved by the state board:

(i) All administrators must have proper credentials;

(ii) WAC 180-16-220(((~~2~~))) (1) which requires that all teachers have proper credentials;

(iii) The school district shall provide adequate instruction for all pupils in attendance;

(iv) Adequate provisions must be made for the health and safety of all pupils;

(v) The local district shall have a written plan for continuing the school program during this period; and

(vi) The required ratio of enrolled pupils to certificated personnel for the first five days shall not exceed 60 to 1, for the next five days shall not exceed 45 to 1 and thereafter shall not exceed 30 to 1.

(c) Program disapproval shall be effective as of the day following transmittal of a notice of disapproval by the state superintendent and shall apply to those particular school days encompassed in whole or in part by the remainder of the strike period.

(d) The decision of the state superintendent shall be final except as it may be reviewed by and at the option of the state board of education.

(e) The program shall be deemed approved during those days of operation for which a trial court order ordering striking employees to work is in effect.

(3) Work stoppages. Nothing in this section or WAC 180-16-191 through 180-16-225 shall be construed as con-

doning or authorizing any form of work stoppage which disrupts any portion of the planned educational program of a district or the maintenance of an approved program for less than the minimum number of school days required by law, except as excused for apportionment purposes by the superintendent of public instruction pursuant to RCW 28A.150.290.

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-16-164 Work stoppages and maintenance of approved programs for less than 180 days not condoned. Nothing in WAC 180-16-162, 180-16-163 or 180-16-191 through ((~~180-16-240~~)) 180-16-225 shall be construed as condoning or authorizing any form of work stoppage which disrupts the planned educational program of a district, or any portion thereof, or the maintenance of an approved program for less than the minimum number of school days required by law except as excused for apportionment purposes by the superintendent of public instruction pursuant to RCW 28A.150.290.

AMENDATORY SECTION (Amending WSR 04-23-008, filed 11/4/04, effective 12/5/04)

WAC 180-16-220 Supplemental basic education program approval requirements. The following requirements are hereby established by the state board of education as related supplemental condition to a school district's entitlement to state basic education allocation funds, as authorized by RCW 28A.150.220(4).

(1) **Current and valid certificates.** Every school district employee required by WAC ((~~180-79A-140~~)) 181-79A-140 to possess an education permit, certificate, or credential issued by the superintendent of public instruction for his/her position of employment, shall have a current and valid permit, certificate or credential. In addition, classroom teachers, principals, vice principals, and educational staff associates shall be required to possess endorsements as required by WAC ((~~180-82-105, 180-82-120, and 180-82-125~~)) 181-82-105, 181-82-120, and 181-82-125, respectively.

(2) **Annual school building approval.**

(a) Each school in the district shall be approved annually by the school district board of directors under an approval process determined by the district board of directors.

(b) At a minimum the annual approval shall require each school to have a school improvement plan that is data driven, promotes a positive impact on student learning, and includes a continuous improvement process that shall mean the ongoing process used by a school to monitor, adjust, and update its school improvement plan. For the purpose of this section "positive impact on student learning" shall mean:

(i) Supporting the goal of basic education under RCW 28A.150.210, "… to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives …";

(ii) Promoting continuous improvement of student achievement of the state learning goals and essential academic learning requirements; and

(iii) Recognizing nonacademic student learning and growth related, but not limited to: Public speaking, leadership, interpersonal relationship skills, teamwork, self-confidence, and resiliency.

(c) The school improvement plan shall be based on a self-review of the school's program for the purpose of annual building approval by the district. The self-review shall include active participation and input by building staff, students, families, parents, and community members.

(d) The school improvement plan shall address, but is not limited to:

(i) The characteristics of successful schools as identified by the superintendent of public instruction and the educational service districts, including safe and supportive learning environments;

(ii) Educational equity factors such as, but not limited to: Gender, race, ethnicity, culture, language, and physical/mental ability, as these factors relate to having a positive impact on student learning. The state board of education strongly encourages that equity be viewed as giving each student what she or he needs and when and how she or he needs it to reach their achievement potential;

(iii) The use of technology to facilitate instruction and a positive impact on student learning; and

(iv) Parent, family, and community involvement, as these factors relate to having a positive impact on student learning.

(3) Nothing in this section shall prohibit a school improvement plan from focusing on one or more characteristics of effective schools during the ensuing three school years.

(4) School involvement with school improvement assistance under the state accountability system or involvement with school improvement assistance through the federal Elementary and Secondary Education Act shall constitute a sufficient school improvement plan for the purposes of this section.

(5) Nonwaiverable requirements. Certification requirements, including endorsements, and the school improvement plan requirements set forth in subsection (2) of this section may not be waived.

AMENDATORY SECTION (Amending WSR 10-10-007, filed 4/22/10, effective 5/23/10)

WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement. (1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((~~28A.150.220(5)~~)) 28A.305.140 and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said initial waiver requests for up to three school years.

(2) A district that is not otherwise ineligible as identified under WAC 180-18-050 (3)(b) may develop and implement a plan that meets the program requirements identified under WAC 180-18-050(3) to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((~~28A.150.220 (5)~~)) 28A.305.140 and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district.

(3) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which requires the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.

AMENDATORY SECTION (Amending WSR 10-10-007, filed 4/22/10, effective 5/23/10)

WAC 180-18-050 Procedure to obtain waiver. (1) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 (1) and (3) shall occur at a state board meeting prior to implementation. A district's waiver application shall be in the form of a resolution adopted by the district board of directors. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution shall be accompanied by information detailed in the guidelines and application form available on the state board of education's web site.

(2) The application for a waiver and all supporting documentation must be received by the state board of education at least fifty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

(3)(a) Under this section, a district meeting the eligibility requirements may develop and implement a plan that meets the program requirements identified under this section and any additional guidelines developed by the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((~~28A.150.220(5)~~)) 28A.305.140 and WAC 180-16-215. The plan must be designed to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. This section will remain in effect only through August 31, 2018. Any plans for the use of waived days authorized under this section may not extend beyond August 31, 2018.

(b) A district is not eligible to develop and implement a plan under this section if:

(i) The superintendent of public instruction has identified a school within the district as a persistently low achieving school; or

(ii) A district has a current waiver from the minimum one hundred eighty-day school year requirement approved by the board and in effect under WAC 180-18-040.

(c) A district shall involve staff, parents, and community members in the development of the plan.

(d) The plan can span a maximum of three school years.

(e) The plan shall be consistent with the district's improvement plan and the improvement plans of its schools.

(f) A district shall hold a public hearing and have the school board approve the final plan in resolution form.

(g) The maximum number of waived days that a district may use is dependent on the number of learning improvement days, or their equivalent, funded by the state for any given school year. For any school year, a district may use a maximum of three waived days if the state does not fund any learning improvement days. This maximum number of waived days will be reduced for each additional learning improvement day that is funded by the state. When the state funds three or more learning improvement days for a school year, then no days may be waived under this section.

Scenario	Number of learning improvement days funded by state for a given school year	Maximum number of waived days allowed under this section for the same school year
A	0	3
B	1	2
C	2	1
D	3 or more	0

(h) The plan shall include goals that can be measured through established data collection practices and assessments. At a minimum, the plan shall include goal benchmarks and results that address the following subjects or issues:

(i) Increasing student achievement on state assessments in reading, mathematics, and science for all grades tested;

(ii) Reducing the achievement gap for student subgroups;

(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).

(i) Under this section, a district shall only use one or more of the following strategies in its plan to use waived days:

(i) Use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance;

(ii) Use data from multiple measures to identify and implement comprehensive, research-based, instructional pro-

grams that are vertically aligned from one grade to the next as well as aligned with state academic standards;

(iii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students;

(iv) Implement strategies designed to recruit, place, and retain effective staff;

(v) Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(vi) Increase graduation rates through, for example, credit-recovery programs, smaller learning communities, and acceleration of basic reading and mathematics skills;

(vii) Establish schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff;

(viii) Institute a system for measuring changes in instructional practices resulting from professional development;

(ix) Provide ongoing, high-quality, job-embedded professional development to staff to ensure that they are equipped to provide effective teaching;

(x) Develop teacher and school leader effectiveness;

(xi) Implement a school-wide "response-to-intervention" model;

(xii) Implement a new or revised instructional program;

(xiii) Improve student transition from middle to high school through transition programs or freshman academies;

(xiv) Develop comprehensive instructional strategies;

(xv) Extend learning time and community oriented schools.

(j) The plan must not duplicate activities and strategies that are otherwise provided by the district through the use of late-start and early-release days.

(k) A district shall provide notification to the state board of education thirty days prior to implementing a new plan. The notification shall include the approved plan in resolution form signed by the superintendent, the chair of the school board, and the president of the local education association; include a statement indicating the number of certificated employees in the district and that all such employees will be participating in the strategy or strategies implemented under the plan for a day that is subject to a waiver, and any other required information. The approved plan shall, at least, include the following:

(i) Members of the plan's development team;

(ii) Dates and locations of public hearings;

(iii) Number of school days to be waived and for which school years;

(iv) Number of late-start and early-release days to be eliminated, if applicable;

(v) Description of the measures and standards used to determine success and identification of expected benchmarks and results;

(vi) Description of how the plan aligns with the district and school improvement plans;

(vii) Description of the content and process of the strategies to be used to meet the goals of the waiver;

(viii) Description of the innovative nature of the proposed strategies;

(ix) Details about the collective bargaining agreements, including the number of professional development days (district-wide and individual teacher choice), full instruction days, late-start and early-release days, and the amount of other noninstruction time; and

(x) Include how all certificated staff will be engaged in the strategy or strategies for each day requested.

(l) Within ninety days of the conclusion of an implemented plan a school district shall report to the state board of education on the degree of attainment of the plan's expected benchmarks and results and the effectiveness of the implemented strategies. The district may also include additional information, such as investigative reports completed by the district or third-party organizations, or surveys of students, parents, and staff.

(m) A district is eligible to create a subsequent plan under this section if the summary report of the enacted plan shows improvement in, at least, the following plan's expected benchmarks and results:

(i) Increasing student achievement on state assessments in reading and mathematics for all grades tested;

(ii) Reducing the achievement gap for student subgroups;

(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).

(n) A district eligible to create a subsequent plan shall follow the steps for creating a new plan under this section. The new plan shall not include strategies from the prior plan that were found to be ineffective in the summary report of the prior plan. The summary report of the prior plan shall be provided to the new plan's development team and to the state board of education as a part of the district's notification to use a subsequent plan.

(o) A district that is ineligible to create a subsequent plan under this section may submit a request for a waiver to the state board of education under WAC 180-18-040(1) and subsections (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 06-23-006, filed 11/2/06, effective 12/3/06)

WAC 180-38-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(6).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(1).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(2).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for private school attendance when a child is not fully immunized, as prescribed by the state board of health (((~~WAC 246-100-166(5)~~))) chapter 246-100 WAC).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the private school, on a form pre-

scribed by the department of health, which complies with RCW 28A.210.090.

(6) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance due to failure to submit a schedule of immunization, or a certificate of exemption in accordance with RCW 28A.210.120.

(7) "School day" shall mean each day of the school year on which students enrolled in the private school are engaged in educational activity planned by and under the direction of the staff, as directed by the chief administrator and applicable governing board of the private school.

(8) "Parent" shall mean parent, legal guardian, or other adult *in loco parentis.*

AMENDATORY SECTION (Amending WSR 02-14-125, filed 7/2/02, effective 8/2/02)

WAC 180-52-070 Approved standardized tests for use by students receiving home-based instruction—Examples—Assistance. (1)(a) Pursuant to RCW 28A.200.-010((~~(3)~~)), the state board of education will provide a list of examples of standardized achievement tests that a parent may use to assess and determine whether their child is making reasonable academic progress.

(b) Tests on the list are approved by the state board of education on the basis that they are standardized achievement tests.

(c) Parents may use a standardized test that does not appear on the list of examples if it has been evaluated by a test evaluation organization recognized by the state board of education and cited on the state board web page.

(d) Parents may contact the state board of education office for assistance in determining if a test of their choosing that is not on the list of examples is standardized.

(2) The list of examples of standardized achievement tests shall be:

(a) Made available on the web page of the state board;

(b) Included in the following publication of the office of the superintendent of public instruction, "*Washington's State Laws Regulating Home-Based Instruction*"; and

(c) Provided on request.

(3) The list of examples of standardized achievement tests on the state board web page may not be changed without prior approval of the state board of education.

AMENDATORY SECTION (Amending WSR 04-20-093, filed 10/5/04, effective 11/5/04)

WAC 180-72-050 Adult education defined. For the purpose of this chapter "adult education" shall be defined as set forth in RCW 28B.50.030((~~(12)~~)) which provides as follows: "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" (((~~WAC 180-51-061(2)~~)) chapter 180-51 WAC) provided by public educational institutions and community-based organizations, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate: However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate: Nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

AMENDATORY SECTION (Amending WSR 03-04-053, filed 1/29/03, effective 3/1/03)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved private school" means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been approved by the state board of education in accordance with the minimum standards for approval as prescribed in this chapter.

(2)(a) "Reasonable health requirements" means those standards contained in chapter ((~~248-64~~)) 246-366 WAC as adopted by the state board of health.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter ((~~48.48~~)) 43.44 RCW.

(3)(a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not raise a question as to the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but raises a question as to the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a serious, imminent threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5)(a) "Non-Washington state certificated teacher" means a person who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of forty-five quarter credits beyond the baccalaureate degree with a minimum of forty-five quarter credits in courses in the subject matter to be taught or in courses closely related to the subject matter to be taught; or

(iii) A minimum of three calendar years of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree, including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school which employs a non-Washington state certificated teacher or teachers pursuant to this subsection employs at least one person certified pursuant to rules of the state board of education and (c) of this subsection to every twenty-five FTE students enrolled in grades kindergarten through twelve. The school will report the academic preparations and experience of each teacher providing K-12 instruction; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section and as verified by the private school, meets the age, good moral character, and personal fitness requirements of WAC ((~~180-79A-150~~)) 181-79A-150 (1) and (2), has not had his or her teacher's certificate revoked by any state or foreign country. (WAC ((~~180-79A-155~~)) 181-79A-155 (5)(a).)

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher or administrator shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

AMENDATORY SECTION (Amending Order 21-88, filed 12/14/88)

WAC 180-96-040 Regular high school education program—Definition. As used in this chapter the term "regular high school education program" means a secondary education program operated pursuant to chapters ((~~180-50~~)) 392-410 and 180-51 WAC leading to the issuance of a high school diploma.

WSR 10-20-144
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed October 5, 2010, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-16-105.

Title of Rule and Other Identifying Information: WAC 246-105-040 Requirements based on national immunization guidelines.

Hearing Location(s): State Board of Health Meeting, Shoreline Conference Center, 18560 1st Avenue N.E., Shoreline, WA 98155, on November 10, 2010, at 1:55 p.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Jeff Wise, Washington State Department of Health, P.O. Box 47843, Olympia, WA 98504-7843, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-5390, by November 1, 2010.

Assistance for Persons with Disabilities: Contact Desiree Robinson by November 1, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will update the Reference to the advisory committee on immunization practices' (ACIP) recommended childhood and adolescent immunization schedule from the 2008 version to the 2010 version. The proposed effective date is July 1, 2011. The proposed change would require schools and child care centers to follow the 2010 ages and intervals recommendations for vaccine-preventable diseases listed in the rule during the 2011-2012 school year. Minor changes to the ages and intervals of polio vaccine would result: (1) The minimum interval between the third and fourth dose is changed from four weeks to six months, and (2) clarification that the fourth dose must be given on or after a child's fourth birthday. There are no other changes to any other required vaccinations.

Reasons Supporting Proposal: This proposal is necessary to maintain consistency between the national immunization standards as set by the ACIP and Washington state school and child care immunization requirements.

Statutory Authority for Adoption: RCW 28A.210.140.

Statute Being Implemented: RCW 28A.210.140.

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Wise, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3483; Implementation and Enforcement: Janna Bardi, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3568.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jeff Wise, Washington State Department of Health, P.O. Box 47843, Olympia, WA 98504, phone (360)

236-3483, fax (360) 236-3590, e-mail jeff.wise@doh.wa.gov.

October 5, 2010
Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-040 Requirements based on national immunization guidelines. The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the following published national immunization guidelines:

(a) ((~~Effective July 1, 2008, the "*Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2007*"; as published in the *Morbidity and Mortality Weekly Report (MMWR)*, 2007;55(51 and 52):Q1-4.~~

~~(b)~~)) Effective July 1, 2009, the "*Recommended Immunization Schedule for Persons Aged 0-18 Years, United States 2008*"; as published in MMWR 2008;57(01):Q1-4.

(b) Effective July 1, 2011, the "*Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2010*"; as published in MMWR, 2010;58(51 and 52):Q1-4.

(2) In addition to the ages and intervals required by subsection (1) of this section, the following vaccine administration guidelines shall apply. Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(a) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(b) Diagnosis or verification of a history of varicella disease by a health care provider; or

(c) Diagnosis or verification of a history of herpes zoster by a health care provider; or

(d) Serologic proof of immunity against varicella; or

(e) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

WSR 10-20-145
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 10-13—Filed October 5, 2010, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-126.

Title of Rule and Other Identifying Information: Revisions to chapter 173-401 WAC, Operating permit regulation.

This rule making proposes amendments to chapter 173-401 WAC to align Washington's air operating permit rule with the federal tailoring rule. Revisions to 40 C.F.R. 70.2 establish thresholds for greenhouse gas emissions that define when a permit is required under the federal air operating permit program.

Hearing Location(s): Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on November 10, 2010, at 6:30 p.m.

Date of Intended Adoption: December 1, 2010.

Submit Written Comments to: Elena Guilfoil, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail elena.guilfoil@ecy.wa.gov, fax (360) 407-7528, by November 17, 2010.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6830, by November 2, 2010. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under the Environmental Protection Agency's (EPA) light-duty vehicle rule (adopted May 7, 2010), greenhouse gases become subject to regulation under the federal Clean Air Act beginning January 2, 2011. Because of this deadline, EPA adopted rules in June 2010 (known as the tailoring rule) establishing thresholds for greenhouse gas emissions that define when a permit is required under the federal air operating permit program. Chapter 173-401 WAC contains the state rules implementing the federal air operating permit program. Ecology must update the state rule to align with the federal greenhouse gas emissions thresholds in 40 C.F.R. 70.2 by revising the definition of "major source" and adding the definition of "subject to regulation."

The federal rules establish greenhouse gas emission thresholds at 100,000 tons per year or more for each existing air operating permit source beginning on January 2, 2011. Sources currently with an air operating permit must address their greenhouse gas emissions when applying for, renewing or revising their air operating permits. Beginning on July 1, 2011, sources that emit 100,000 tons per year or more of greenhouse gases become subject to the air operating permit program, regardless of their emissions of other pollutants. These newly subject sources must apply for an air operating permit on or before July 1, 2012.

Reasons Supporting Proposal: Ecology must align its rule with the federal rule by January 2, 2011, when the federal greenhouse gas thresholds become effective. Without these new, higher thresholds, many sources in Washington would unnecessarily become subject to federal permits for emitting greenhouse gases at or above one hundred tons per year (the existing thresholds for certain criteria pollutants).

Statutory Authority for Adoption: RCW 70.94.161 and 70.94.510.

Statute Being Implemented: RCW 70.94.161 and 70.94.510.

Rule is necessary because of federal law, 40 C.F.R. 70.2 as revised by 75 Federal Register 31514 on June 30, 2010.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Lacey, (360) 407-6855; Implementation: Crystal Alford, Spokane, (509) 329-3595; and Enforcement:

Benton Clean Air Agency, Kennewick, (509) 783-1304, Northwest Clean Air Agency, Mount Vernon, (360) 428-1617, Olympic Region Clean Air Agency, Olympia, 1-800-422-5623, Puget Sound Clean Air Agency, Seattle, 1-800-552-3565, Southwest Clean Air Agency, Vancouver, 1-800-633-0709, Spokane Regional Clean Air Agency, Spokane, (509) 477-4727, Yakima Regional Clean Air Agency, Yakima, 1-800-540-6950, Department of Ecology - Central Regional Office, Yakima, (509) 575-2490, Department of Ecology - Eastern Regional Office, Spokane, (509) 329-3400, and Department of Ecology - Industrial Section, Lacey, (360) 407-6800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. With this rule making, ecology is updating the state rule to comply with a federal rule, 40 C.F.R. 70.2. Under RCW 19.85.025(3), the requirement to evaluate small business impacts does not apply to a rule adoption that is not required to comply with RCW 34.05.310.

A cost-benefit analysis is not required under RCW 34.05.328. With this rule making, ecology is updating the state rule to incorporate requirements in a federal rule, 40 C.F.R. 70.2, without material change. RCW 34.05.328 (5)(b)(iii) exempts a rule making from the requirement to prepare a cost-benefit analysis for any rule making that adopts federal rules by reference or incorporates federal rules without material change.

October 1, 2010
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 02-02, filed 9/16/02, effective 10/17/02)

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Affected source" means a source that includes one or more affected units.

(2) "Affected states" are the states or federally-recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) "Affected unit" means a fossil-fuel fired combustion device or a source that opts-in under 40 CFR part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 CFR 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) "Chapter 401 permit" or "permit" means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) "Chapter 401 source" means any source subject to the permitting requirements of this chapter.

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data

includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.

(8) "Delegated authority" means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(9) "Designated representative" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(10) "Draft permit" means the version of a permit for which the permitting authority offers public participation or affected state review.

(11) "Emissions allowable under the permit" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(12) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(13) The "EPA" or the "administrator" means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(14) "Federal Clean Air Act" or "FCAA" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392. December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(15) "Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 CFR §§ 70.7 and 70.8.

(16) "General permit" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(17) "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(18) "Intermittent compliance" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of noncompliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

(19) "Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual,* 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or

(xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

(c) A major stationary source as defined in part D of Title I of the FCAA, including:

(i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.

(20) "Permit modification" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(21) "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

(22) "Permit revision" means any permit modification or administrative permit amendment.

(23) "Permitting authority" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "Proposed permit" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 CFR 70.8.

(26) "Regulated air pollutant" means the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

(i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(27) "Regulated pollutant (for fee calculation)," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

(a) Carbon monoxide;

(b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

(28) "Renewal" means the process by which a permit is reissued at the end of its term.

(29) "Responsible official" means one of the following:

(a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 CFR part 70.

(30) "Section 502 (b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(31) "Small business stationary source" means a stationary source that:

(a) Is owned or operated by a person that employs one hundred or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit fifty tons or more per year of any regulated pollutant; and

(e) Emits less than seventy-five tons per year of all regulated pollutants.

(32) "Solid waste incineration unit" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(33) "State" means any nonfederal permitting authority, including any local agency, interstate association, or statewide program.

(34) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

(35) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 CFR chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions.

(b) The term "tpy (tons per year) CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO_2e.

(36) "Title I modification" or "modification under any provision of Title I of the FCAA" means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

WSR 10-20-146
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed October 5, 2010, 4:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-117.

Title of Rule and Other Identifying Information: WAC 246-100-191 Animals, birds, pets—Measures to prevent human disease, 246-100-201 Birds—Measures to prevent psittacosis, 246-100-192 Animals in public settings—Measures to prevent human disease, and 246-100-197 Rabies—Measures to prevent human disease. Proposing amendments to the two existing rules, WAC 246-100-191 and 246-100-

201; and proposing two new rules, WAC 246-100-192 and 246-100-197.

Hearing Location(s): State Board of Health Meeting, Shoreline Conference Center, 18560 1st Avenue N.E., Shoreline, WA 98155, on November 10, 2010, at 11:30 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Ted Dale, Department of Health, P.O. Box 47825, Olympia, WA 98504, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2261, by November 3, 2010.

Assistance for Persons with Disabilities: Contact Desiree Robinson by November 3, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to reflect current federal and other state agency laws and rules, and national standards of practice designed to prevent and control human cases of psittacosis, rabies, and other diseases transmissible from animals to humans. The proposed rules focus on environmental factors and controls to prevent and control zoonotic disease outbreaks and do not address human case tracking and management of illness. The proposed rules make significant amendments as well as housekeeping and editorial changes to clarify WAC 246-100-191 and 246-100-201. The proposal also adds two new sections to enable a more comprehensive approach to prevent and control many zoonotic disease pathogens and the environments in which they are most likely to pose an increased risk to the public.

Reasons Supporting Proposal: RCW 43.20.050 requires the state board of health (board) to adopt rules for the prevention and control of infectious and noninfectious diseases, including vector borne illness. RCW 16.70.040(1) authorizes the board to adopt rules relating to the importation, movement, sale, transfer, or possession of pet animals to protect the people of Washington state. These proposed rules reflect federal and other state agency laws and rules, and national standards to prevent and control human cases of psittacosis, rabies, and other diseases transmissible from animals to humans.

Statutory Authority for Adoption: RCW 43.20.050 and 16.70.040(1).

Statute Being Implemented: RCW 43.20.050 and 16.70.040(1).

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Ron Wohrle, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3369; and Enforcement: Nancy Napolilli, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3325.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by contacting Ted Dale, P.O. Box 47825, Olympia, WA 98504-7825, phone (360) 236-3322, fax (360) 236-2261, e-mail Ted.Dale@DOH.WA.GOV.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ted Dale, P.O. Box 47825, Olympia, WA 98504-7825, phone (360) 236-3322, fax (360) 236-2261, e-mail Ted.Dale@DOH.WA.GOV.

October 5, 2010
Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-100-191 Animals((~~, birds, pets~~)) General measures to prevent human disease. (1) ((~~All persons and entities are prohibited from:~~

~~(a) Sale of milk, meat, hides, and hair from animals infected with anthrax; and~~

~~(b) Sale and display of turtles except as permitted under Title 21 CFR, Food and Drug Administration, part 1240.62, 1986.~~

~~(2) Except for bonafide public or private zoological parks, persons and entities are prohibited from:~~

~~(a) Importing into Washington state any bat, skunk, fox, raccoon, or coyote without a permit from the director of the Washington state department of agriculture, as required in WAC 16-54-125; and~~

~~(b) Acquiring, selling, bartering, exchanging, giving, purchasing, or trapping for retention as pets or for export any:~~

~~(i) Bat,~~

~~(ii) Skunk,~~

~~(iii) Fox,~~

~~(iv) Raccoon, and~~

~~(v) Coyote.~~

~~(3) Local health officers shall determine whether or not to order the destroying or testing of animals other than cats and dogs if:~~

~~(a) The animal has bitten or otherwise exposed a person, and~~

~~(b) Rabies is suspected.~~

~~(4) When an animal has bitten or otherwise exposed a person, the local health officer shall institute any or all of the following as judged appropriate:~~

~~(a) Order testing and destruction of the animal,~~

~~(b) Order restriction of dogs and cats for ten days observation,~~

~~(c) Require examination and recommendation by a veterinarian related to signs of rabies, or~~

~~(d) Specify other appropriate actions for animals considered low risk for rabies.~~

~~(5) When an animal other than a bat is found to be rabid, the local health officer shall immediately institute a community-wide rabies control program including:~~

~~(a) Issuance of orders to pick up and impound all stray and unlicensed dogs and cats,~~

~~(b) Issuance of orders to owners of dogs and cats requiring proof of rabies vaccination of animals by a veterinarian within six previous months,~~

~~(c) Restriction of household mammals to owners' premises except when on a leash, or~~

~~(d) Institute actions other than subsection (5)(a), (b), and (c) of this section when judged appropriate.~~

~~(6) A person destroying an animal as described in this section shall:~~

~~(a) Avoid damaging the brain; and~~

~~(b) Transport the dead animal's head, brain, or body in a manner approved by the local health department.~~

~~(7) To improve surveillance for rabies, laboratories shall inform the local health officer prior to testing specimens and samples for rabies.~~

~~(8) When a cat or dog has been bitten or exposed to a rabid or suspected rabid animal, the local health officer shall require:~~

~~(a) Destruction of the exposed animal; or~~

~~(b) Revaccination, if currently vaccinated, including observation by owner for ninety days; or~~

~~(c) If not currently vaccinated, vaccination and strict isolation for six months with revaccination one month prior to release from isolation; or~~

~~(d) Any other action judged appropriate by the local health officer.~~

~~(9) A person importing a dog and/or a cat into Washington state shall comply with WAC 16-54-120.~~)) The purpose of this rule is to protect the public from acquiring diseases transmissible by animals and animal products.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Carapace" means a hard bony outer covering, such as the fused dorsal plates of a turtle.

(b) "Immunocompromised" means having the immune system impaired or weakened as by drugs or illness.

(c) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency; or the authorized agents of these entities.

(d) "Poultry" means chickens, ducks, turkeys, and other domestic farm birds.

(e) "Turtles" means all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order Testudinata, class Reptilia, except marine species in the families Dermachelidae and Chelonidae.

(f) "Vendor" means a person selling, trading, or transferring an animal to another person as a commercial activity.

(3) A vendor transferring a reptile, amphibian, or poultry chick for the purpose of being kept as a pet shall provide the buyer or recipient a written notification including:

(a) Information about possible human diseases contracted from reptiles, amphibians, or poultry chicks, such as Salmonella infection;

(b) Who is at greater risk for contracting and experiencing severe illness related to contact with reptiles, amphibians, and poultry chicks, such as young, elderly, and immunocompromised persons; and

(c) Disease prevention messages, such as proper hand washing and recommendations for high risk groups.

(4) To meet the requirements of subsection (3) of this section, vendors may use materials provided by the department and available at www.doh.wa.gov.

(5) Live turtles with a carapace length of less than four inches shall not be sold, held for sale, or offered for sale or distribution for the purpose of being kept as a pet.

(6) All persons are prohibited from selling products containing milk, meat, hides, or hair that is contaminated or suspected of being contaminated with anthrax as determined by the state health officer, local health officer, or a federal agency.

(7) All persons are prohibited from selling, transferring, or acquiring an animal or animal product associated with a zoonotic disease outbreak or suspected outbreak as determined by the state health officer, local health officer, or a federal agency.

NEW SECTION

WAC 246-100-192 Animals in public settings—Measures to prevent human disease. (1) The purpose of this rule is to protect the public from diseases transmitted to humans from animals in public settings.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Animal exhibitor" means a person with a valid class C certification as an exhibitor under the Animal Welfare Act, 7 U.S.C. 2131-2159.

(b) "Animal venue operator" means a person furnishing a setting where public contact with animals is encouraged such as a petting zoo, county fair, or horse or pony rides.

(c) "Immunocompromised" means having the immune system impaired or weakened as by drugs or illness.

(d) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency; or the authorized agents of these entities.

(3) Animal venue operators shall:

(a) Provide an accessible hand-washing station or alternative hand sanitizing method approved by the local health officer;

(b) Post a prominent sign in a simple and easy-to-understand format for visitors to see before they enter the animal exhibit area which warns that:

(i) Animals can carry germs that can make people sick, even animals that appear healthy;

(ii) Eating, drinking, or putting things in a person's mouth in animal areas could cause illness;

(iii) Older adults, pregnant women, immunocompromised people, and young children are more likely to become ill from contact with animals;

(iv) Young children and individuals with intellectual disabilities should be supervised in animal exhibit areas; and

(v) Strollers, baby bottles, pacifiers, and children's toys are not recommended in animal exhibit areas.

(c) Post a prominent sign at each exit of the animal exhibit area reminding visitors to wash their hands.

(4) To meet the requirements of subsections (3)(b) and (c) of this section, animal venue operators may use materials provided by the department and available at www.doh.wa.gov.

(5) Animal exhibitors and other persons legally responsible for animals in public settings shall:

(a) Observe animals daily for signs of illness;

(b) Prevent public contact with sick animals;

(c) As applicable, comply with WAC 246-100-197, Rabies—Measures to prevent human disease;

(d) As applicable, comply with WAC 246-100-201, Psittacosis—Measures to prevent human disease; and

(e) Comply with, and have in their possession, any local, state, or federally required documents allowing the exhibition of animals in public settings.

(6) Animal venue operators, animal exhibitors, other persons legally responsible for animals in public settings, and veterinarians shall cooperate with local health officer investigations and control measures for zoonotic disease.

NEW SECTION

WAC 246-100-197 Rabies—Measures to prevent human disease. (1) The purpose of this rule is to protect the public from rabies, a deadly disease.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Animal exhibitor" means a person with a valid class C certification as an exhibitor under the Animal Welfare Act, 7 U.S.C. 2131-2159.

(b) "Cat" means an animal of the species *Felis domesticus*, and excludes felid hybrid animals.

(c) "Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA) executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA.

(d) "Dog" means an animal of the species *Canis familiaris* and excludes canid hybrid animals.

(e) "Entry permit" means prior written permission from the director of the department of agriculture.

(f) "Euthanize" means to humanely destroy an animal by a method that involves instantaneous unconsciousness and immediate death or by a method that causes painless loss of consciousness and death during the loss of consciousness.

(g) "Ferret" means an animal of the species *Mustela furo*.

(h) "Hybrid" means any mammal which is the offspring of the reproduction between any species of:

(i) Wild canid or hybrid wild canid and a domestic dog or hybrid wild canid, or is represented by its owner to be a wolf hybrid, coyote hybrid, coy dog or any other kind of wild canid hybrid; or

(ii) Wild felid or hybrid wild felid and a domestic cat or hybrid wild felid or is represented by its owner to be a wild felid hybrid.

(i) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. Livestock does not mean "wild animals" as defined in RCW 77.08.010.

(j) "Owner" means any person legally responsible for the care and actions of a pet animal.

(k) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency; or the authorized agents of these entities.

(l) "Research facility" means a person with a valid class R certification as a research facility under the Animal Welfare Act, 7 U.S.C. 2131-2159.

(m) "Zoological park" means an accredited member of the American Zoo and Aquarium Association (AZA).

(3) An owner of a dog, cat, or ferret shall have it vaccinated against rabies and revaccinated following veterinary and vaccine manufacturer instructions. This requirement does not apply to animal shelters.

(4) Zoological parks and other types of animal exhibitors shall confine for a minimum of six months all wild-caught mammals susceptible to rabies and intended for public exhibition.

(5) The following restrictions apply to the importation and movement of certain mammals in Washington state.

(a) All persons are prohibited from acquiring, selling, bartering, exchanging, giving, purchasing, distributing, or trapping to retain any bat, skunk, fox, raccoon, or coyote, except a zoological park, animal exhibitor, or research facility.

(b) All persons are prohibited from importing into the state any bat, skunk, fox, raccoon, or coyote, except a zoological park, animal exhibitor, or research facility under an entry permit issued by the director of the department of agriculture in consultation with the secretary of the department.

(c) Any person importing a dog internationally that requires confinement according to requirements of 42 C.F.R. 71.51, shall notify the secretary of the department within seventy-two hours of the animal's arrival in the state.

(6) When a local health officer receives a report that a dog, cat, ferret, or hybrid has been exposed to a rabid or suspected rabid animal, the local health officer may require:

(a) Unvaccinated dogs, cats and ferrets be:

(i) Euthanized immediately; or

(ii) Confined in a manner considered appropriate by the local health officer for at least six months from the date of suspected rabies exposure and given rabies vaccine at least thirty days prior to the end of the confinement period.

(b) Currently vaccinated dogs, cats, and ferrets be revaccinated immediately with rabies vaccine, kept under the owner's control in a manner considered appropriate by the local health officer, and observed for forty-five days for signs of illness.

(c) Hybrids be euthanized immediately.

(7) The owner or caretaker of a dog, cat, or ferret that is confined or under observation as described in subsection (6) of this section shall report any illness in the animal to the local health officer. If signs suggestive of rabies develop, the local health officer may order the animal to be euthanized and tested for rabies.

(8) When a local health officer receives a report that a mammal has bitten or otherwise potentially exposed a person to rabies, the local health officer may institute any or all of the following:

(a) Order a healthy dog, cat, or ferret to be confined in a manner the local health officer considers appropriate and observed daily for at least ten days with any illness reported to the local health officer, and if signs suggestive of rabies

develop, order the animal to be euthanized and tested for rabies;

(b) Order immediate euthanasia and rabies testing of any stray or unwanted dog, cat, or ferret; or

(c) Order euthanasia and rabies testing of any hybrid or other mammal that is not a livestock animal.

(9) When a mammal other than a bat is found to be rabid, the local health officer may institute additional community-wide measures as appropriate including, but not limited to, the following actions:

(a) Issuance of orders to pick up and impound stray and unlicensed dogs, cats, hybrids and ferrets;

(b) Issuance of orders to owners of dogs, cats, and ferrets requiring proof of rabies vaccination following veterinary and vaccine manufacturer instructions;

(c) Restriction of dogs, cats, hybrids, and ferrets to owners' or caretakers' premises except when on leash; or

(d) Provide public and professional outreach education.

(10) When mammals are displaced during or after a man made or natural disaster and require emergency sheltering, the local health officer may implement and coordinate rabies prevention and control measures as described in Part I B.8., Disaster Response of the *Compendium of Animal Rabies Prevention and Control*, 2008. A copy of this publication is available for review at the department's web site, at www.doh.wa.gov.

(11) A person euthanizing a mammal for the purpose of rabies testing as described in this section shall prepare, package, and transport the specimens to be tested in a manner approved by the local health officer and according to the department's *Guidelines for the Submission of Specimens for Rabies Testing*, August 2006. This publication is available from the department at www.doh.wa.gov.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-100-201 ((~~Birds~~)) Psittacosis—Measures to prevent ((~~psittacosis~~)) human disease. (1) ((~~Definitions specific to this section:~~

~~(a) "Breeder" means a person or persons propagating birds for purpose of sale, trade, gift, or display;~~

~~(b) "Displayer" means a person, owner, or entity other than a public or private zoological park showing, exhibiting, or allowing a person or persons to handle or access a bird in a place open to the public or in a health care facility;~~

~~(c) "Leg band" means a smooth plastic or metal cylinder, either open (seamed) or closed (seamless), designed to be used to encircle a leg of a bird including permanent inscription of identification indicating:~~

~~(i) Code for individual bird, and~~

~~(ii) Code for breeder source except when open bands identify vendor rather than breeder.~~

~~(d) "Psittacine bird" or "bird" means all birds commonly known as:~~

~~(i) Parrots,~~

~~(ii) Macaws,~~

~~(iii) Cockatoos,~~

~~(iv) Lovebirds,~~

~~(v) Parakeets, and~~

~~(vi) All other birds of the order psittaciformes.~~

~~(e) "Vendor" means a person or entity selling, trading, or giving a bird to another person or entity.~~

~~(2) A person selling, trading, or otherwise transferring a bird shall identify each bird by:~~

~~(a) A coded and closed (seamless) leg band;~~

~~(b) A United States department of agriculture open (seamed) leg band; or~~

~~(c) An open (seamed) leg band only in cases where an original and closed (seamless) leg band was lost or required replacement due to injury or potential injury to the bird.~~

~~(3) A vendor transferring a bird to other than the general public shall maintain a record of transfer including acquisition, sales, and trade of a bird, for at least one year and including:~~

~~(a) Date of transaction;~~

~~(b) Name and address of the recipient and source;~~

~~(c) Number and type, including the common name of the bird transferred; and~~

~~(d) Leg band codes, including breeder or vendor and individual bird codes, omitting individual bird code only upon initial transfer of a bird propagated by the breeder.~~

~~(4) A vendor transferring a bird to the general public shall provide each buyer or recipient with:~~

~~(a) A sales slip or written document including all information required in subsection (3)(a), (b), (c), and (d) of this section; and~~

~~(b) A written warning or caution notice including:~~

~~(i) Information about possible human infection or disease caused by birds, especially psittacosis, parrot fever, and ornithosis;~~

~~(ii) Signs of infection or a sick bird including:~~

~~(A) Nasal discharge,~~

~~(B) Sneezing,~~

~~(C) Coughing,~~

~~(D) Ruffled feathers,~~

~~(E) Lethargy, and~~

~~(F) Diarrhea.~~

~~(iii) Signs and symptoms of an illness in a human including, but not limited to:~~

~~(A) Chills,~~

~~(B) Fever,~~

~~(C) Headache,~~

~~(D) Cough, and~~

~~(E) Muscle aches.~~

~~(iv) Information that nasal discharge and droppings of an infected or sick bird may cause illness in humans; and~~

~~(v) Advice to consult veterinarian or health care provider, as appropriate, if signs or symptoms occur.~~

~~(5) A vendor shall post a readable sign in a public area with a warning described in subsection (4)(b) of this section.~~

~~(6) When investigation of a human case of psittacosis indicates probable infection from a bird, the local health officer shall:~~

~~(a) Order collection of blood or other appropriate samples from the suspect bird or birds for appropriate laboratory tests to rule out disease; or~~

~~(b) Use protocols established in *Communicable Diseases Manual*, seventeenth edition, James Chin, MD, MPH, editor,~~

~~2000. A copy of this publication is available for review at the department and at each local health department; and~~

~~(c) Have authority to enforce requirements of this section on a nonpsittacine bird or birds when:~~

~~(i) There is suspected exposure to an infected bird, or~~

~~(ii) There is evidence a bird caused a disease.~~

~~(7) When a local health officer orders a quarantine of a bird or birds, the vendor shall:~~

~~(a) Cooperate with the local health officer, and~~

~~(b) Assume costs associated with action.~~

~~(8) Upon confirmation of psittacosis, vendors shall follow directions issued by the local health officer to:~~

~~(a) Place the birds under antibiotic treatment with environmental cleaning and sanitizing; or~~

~~(b) Destroy all birds on the premises followed by environmental cleaning and sanitizing; and~~

~~(c) Assume costs associated with psittacosis prevention and control action ordered by local and state health officer;~~

~~(d) Prohibit sale or addition of birds to inventory; and~~

~~(e) Prevent contact of any bird with the public.~~

~~(9) A person exhibiting or displaying a bird or birds in a place or area used or occupied by the public shall exhibit the bird or birds in a manner preventing human exposure to the birds and bird discharges except:~~

~~(a) In single-purpose pet shops and aviaries, and~~

~~(b) At bird shows if:~~

~~(i) A room containing a bird or birds is separated from other areas and activities, and~~

~~(ii) The room entrance has a sign warning a person about potential exposure to psittacosis.~~

~~(10) Shipment and embargo of birds.~~

~~(a) Any person or entity receiving a psittacine bird or birds from points outside Washington state shall:~~

~~(i) Comply with Title 9 CFR, parts 92.3 and 92.8(b);~~

~~(ii) Refuse receipt of any bird originating from premises where psittacosis infection is suspected or known; and~~

~~(iii) Refuse receipt of any bird from a premise quarantined for psittacosis.~~

~~(b) The state health officer is authorized to:~~

~~(i) Order placement and removal of an embargo upon shipment of a live bird or birds into Washington state, and~~

~~(ii) Order any action necessary to control an outbreak or potential outbreak of psittacosis in Washington state.~~)) The purpose of this rule is to protect the public from psittacosis.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Avian chlamydiosis" means a bacterial infection of birds caused by *Chlamydophila psittaci*;

(b) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency; or the authorized agents of these entities;

(c) "Psittacine bird" means all birds commonly known as parrots, macaws, cockatoos, cockatiels, lovebirds, parakeets, and all other birds of the order Psittaciformes.

(d) "Psittacosis" means a bacterial infection of humans caused by *Chlamydophila psittaci*.

(e) "Vendor" means a person selling, trading, or transferring a bird to another person as a commercial activity.

(3) A vendor acquiring, selling, trading, or transferring a psittacine bird shall maintain a record of transfer for at least one year which includes:

(a) Date of transaction;

(b) Name, address, and telephone number of the persons involved in the transaction;

(c) Number and type, including the common name of the bird transferred.

(4) A vendor transferring a psittacine bird to a member of the general public shall provide each buyer or recipient with written information about psittacosis and avian chlamydiosis including:

(a) Signs of infection in a sick bird including nasal discharge, sneezing, coughing, ruffled feathers, lethargy, and diarrhea;

(b) Symptoms of psittacosis in a human including chills, fever, headache, cough, and muscle aches;

(c) A warning that nasal discharge and droppings of an infected or sick bird may cause illness in humans;

(d) A warning that healthy appearing birds can shed the harmful bacteria that can cause psittacosis intermittently and that shedding can be activated by stress factors such as relocation, shipping, crowding, chilling, and breeding; and

(e) A recommendation to consult a veterinarian or health care provider, as appropriate, if signs or symptoms occur.

(5) To meet the requirements of subsection (4) of this section, vendors may use materials provided by the department and available at www.doh.wa.gov.

(6) A vendor shall post a readable sign accessible to the general public with the information described in subsection (4) of this section.

(7) A person exhibiting or displaying a psittacine bird in a place or area used or occupied by the public shall exhibit the bird in a manner preventing human exposure to the bird and bird discharges except:

(a) In single-purpose pet shops and aviaries; and

(b) At bird shows if a room containing a bird is separated from other areas and activities, and the room entrance has a sign warning people about potential risk of psittacosis.

(8) The local health officer may initiate an epidemiologic investigation to control the transmission of *C. psittaci* to humans, which may include:

(a) Site visit to where the recently purchased infected bird is located and identification of the location where the bird was originally procured;

(b) Documenting the number and types of birds involved, the health status of potentially affected persons and birds, locations of facilities where birds were housed, relevant ventilation-related factors, treatment protocols, and examination of sales records; and

(c) Working with the bird vendor and vendor's veterinarian to test suspect birds using methods established in Appendix 1 of the *Compendium of Measures To Control Chlamydophila Psittaci Infection Among Humans (Psittacosis) and Pet Birds (Avian Chlamydiosis)*, 2009. A copy of this publication is available for review at the department's web site at www.doh.wa.gov.

(9) When investigating a case of psittacosis, the local health officer may enforce requirements of this section on a

nonpsittacine bird if there is suspected exposure of the nonpsittacine bird to an infected bird.

(10) Upon confirmation of avian chlamydiosis, a vendor shall cooperate with the local health officer and assume costs associated with actions required by the local health officer, which may include, but is not limited to, testing of potentially exposed humans; and quarantine, testing, appropriate antibiotic treatment, and destruction of birds.

(11) Any person receiving a psittacine bird from points outside Washington state shall:

(a) Refuse receipt of any bird originating from premises where avian chlamydiosis infection is suspected or known; and

(b) Refuse receipt of any bird from a premises quarantined for avian chlamydiosis.

WSR 10-20-148
PROPOSED RULES
TRANSPORTATION COMMISSION

[Filed October 6, 2010, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-010.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

As required by law, the transportation commission is reviewing the need to adjust ferry fares in 2011. The proposed rules revise the subject WACs by increasing passenger tolls, vehicle tolls and ferry charter rates effective January 1, 2011.

Hearing Location(s): Puget Sound Regional Council, 1011 Western Avenue, 5th Floor, Seattle, WA 98104, on November 15, 2010, at 3:00 p.m. - 5:00 p.m.

Date of Intended Adoption: November 15, 2010.

Submit Written Comments to: Reema Griffith, Executive Director, Transportation Commission, 2404 Chandler Court S.W., Suite 270, Olympia, WA 98501, e-mail griffir@wstc.wa.gov, fax (360) 705-6802, by November 15, 2010.

Assistance for Persons with Disabilities: Contact transportation commission office by November 15, 2010, TTY (360) 705-7070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to raise the ferry tolls within the specified WACs. The revisions follow the annual review of Washington state ferries (WSF) farebox revenue needs.

No major effects are anticipated.

Reasons Supporting Proposal: WSF's need for additional farebox revenue to meet legislative budget requirements.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Statute Being Implemented: RCW 47.56.030 and 47.60.326.

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

Name of Proponent: Washington state department of transportation, ferries division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The commission has considered this rule and determined that it does not affect more than ten percent of one industry or twenty percent of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSF is anticipated to take in more farebox revenue from the proposed fare increase at the rate of approximately $1,304,000 for fiscal year 2011. Ridership drop-off stemming from the fare increase will not cause a net reduction in farebox revenues. Previous experience with fare hikes has shown that WSF gains more money in fare increases than it loses from reduced ridership, if any.

October 6, 2010
Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. ((~~October 11, 2009~~)) January 1, 2011

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides[1]	Monthly Pass[5]	Bicycle Surcharge[2,6]
Via Auto Ferry	((~~5.30~~))	((~~2.65~~))	((~~4.25~~))	((~~42.40~~))	((~~67.85~~))	
*Fauntleroy-Southworth	5.50	2.75	4.40	44.00	70.40	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island	((~~6.90~~))	((~~3.45~~))	((~~5.55~~))	((~~55.20~~))	((~~88.35~~))	
*Edmonds-Kingston	7.10	3.55	5.70	56.80	90.90	1.00
	((~~2.65~~))	((~~1.30~~))	((~~2.15~~))	((~~42.40~~))	((~~67.85~~))	
Port Townsend-Keystone	2.75	1.35	2.20	44.00	70.40	0.50
*Fauntleroy-Vashon						
*Southworth-Vashon	((~~4.45~~))	((~~2.20~~))	((~~3.60~~))	((~~35.60~~))	((~~57.00~~))	
*Pt. Defiance-Tahlequah	4.55	2.25	3.65	36.40	58.25	1.00

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides[1]	Monthly Pass[5]	Bicycle Surcharge[2,6]
*Mukilteo-Clinton	((~~4.10~~)) 4.20	((~~2.05~~)) 2.10	((~~3.30~~)) 3.40	((~~32.80~~)) 33.60	((~~52.50~~)) 53.80	1.00
((~~*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday~~	~~10.10~~	~~5.05~~	~~8.10~~	~~72.80~~	~~N/A~~	~~2.00[7]~~))
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor((~~- Wednesday-Saturday~~))	((~~11.20~~)) 11.50	((~~5.60~~)) 5.75	((~~9.00~~)) 9.20	((~~72.80~~)) 74.75	N/A	2.00[7]
Between Lopez, Shaw, Orcas and Friday Harbor[4]	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((~~16.40~~)) 16.85	((~~8.20~~)) 8.40	((~~13.15~~)) 13.50	N/A	N/A	4.00[8]
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((~~6.15~~)) 6.30	((~~3.05~~)) 3.15	((~~4.95~~)) 5.05	N/A	N/A	1.00[9]
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)[3]	((~~22.55~~)) 23.15	((~~11.25~~)) 11.55	((~~18.10~~)) 18.55	N/A	N/A	5.00[10]

All fares rounded to the next multiple of $0.05.

* These routes operate as a one-point toll collection system.

[1]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. For mail order deliveries, WSF may add additional days to allow for delivery times.

[2]BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

[3]ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

[4]INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

[5]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.

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 SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

[6]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.

[7]BICYCLE SURCHARGE - This becomes $4.00 during peak season (May 1 ((~~until the second Sunday in October~~)) through September 30).

[8]BICYCLE SURCHARGE - This becomes $6.00 during peak season.

[9]BICYCLE SURCHARGE - This becomes $2.00 during peak season.

[10]BICYCLE SURCHARGE - This becomes $8.00 during peak season.

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.

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.

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.

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.

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.

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.

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.

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 K-12 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 on the sponsoring school's letterhead. 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. 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 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. ((~~October 11, 2009~~)) January 1, 2011

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver[4]	Vehicle Under 20' Over Height Charge[1]	Multiride Media 20 Rides[2]
Fauntleroy-Southworth Port Townsend/Keystone	((~~9.15~~)) 9.35	((~~7.80~~)) 7.95	((~~9.15~~)) 9.35	((~~146.40~~)) 149.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((~~11.85~~)) 12.15	((~~10.10~~)) 10.35	((~~11.85~~)) 12.15	((~~189.60~~)) 194.40
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((~~15.20~~)) 15.55	((~~12.95~~)) 13.25	((~~15.20~~)) 15.55	((~~121.60~~)) 124.40
Mukilteo-Clinton	((~~7.00~~)) 7.20	((~~5.95~~)) 6.15	((~~7.00~~)) 7.20	((~~112.00~~)) 115.20
10 Rides - 5 Round Trips				
*Anacortes to Lopez((~~ - Sunday-Tuesday~~))	((~~24.55~~)) 27.95	((~~19.50~~)) 22.20	((~~24.55~~)) 27.95	((~~102.20~~)) 104.85
((~~*Lopez - Wednesday-Saturday~~	~~27.25~~	~~21.65~~	~~27.25~~	~~102.20~~
~~*Shaw, Orcas - Sunday-Tuesday~~	~~29.45~~	~~24.40~~	~~29.45~~	~~122.65~~))
*Shaw, Orcas((~~ - Wednesday-Saturday~~))	((~~32.70~~)) 33.55	((~~27.10~~)) 27.80	((~~32.70~~)) 33.55	((~~122.65~~)) 125.85
((~~*Friday Harbor - Sunday-Tuesday~~	~~35.05~~	~~30.00~~	~~35.05~~	~~145.90~~))
*Friday Harbor((~~ - Wednesday-Saturday~~))	((~~38.90~~)) 39.85	((~~33.30~~)) 34.10	((~~38.90~~)) 39.85	((~~145.90~~)) 149.45
Between Lopez, Shaw, Orcas and Friday Harbor[3]	((~~17.95~~)) 18.75	((~~17.95~~)) 18.75	((~~17.95~~)) 18.75	((~~71.80~~)) 75.00
International Travel				
Anacortes to Sidney and Sidney to all destinations	((~~44.05~~)) 45.15	((~~35.85~~)) 36.70	((~~44.05~~)) 45.15	N/A

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver[4]	Vehicle Under 20' Over Height Charge[1]	Multiride Media 20 Rides[2]
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((~~13.15~~)) 13.50	((~~10.05~~)) 10.35	((~~13.15~~)) 13.50	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)[5]	((~~57.20~~)) 58.65	((~~45.90~~)) 47.05	((~~57.20~~)) 58.65	N/A

EFFECTIVE 03:00 A.M. ((~~October 11, 2009~~)) January 1, 2011

ROUTES	Motorcycle[5] Incl. Driver Stowage[1] One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage[1] One Way	Motorcycle Oversize Charge[1]	Motorcycle Frequent User Commuter 20 Rides[2]
Fauntleroy-Southworth Port Townsend/Keystone	((~~3.95~~)) 4.10	((~~2.60~~)) 2.70	((~~1.30~~)) 1.35	((~~63.20~~)) 65.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((~~5.15~~)) 5.30	((~~3.40~~)) 3.50	((~~1.70~~)) 1.75	((~~82.40~~)) 84.80
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((~~6.60~~)) 6.75	((~~4.35~~)) 4.45	((~~2.15~~)) 2.20	((~~52.80~~)) 54.00
Mukilteo-Clinton	((~~3.05~~)) 3.15	((~~2.00~~)) 2.10	((~~1.00~~)) 1.05	((~~48.80~~)) 50.40
*Anacortes to Lopez((~~ - Sunday-Tuesday~~))	((~~13.05~~)) 14.80	((~~8.00~~)) 9.05	((~~2.95~~)) 3.30	((~~108.40~~)) 111.00
((~~*Lopez - Wednesday-Saturday~~	~~14.45~~	~~8.85~~	~~3.25~~	~~108.40~~
~~*Shaw, Orcas - Sunday-Tuesday~~	~~13.95~~	~~8.90~~	~~3.85~~	~~116.25~~))
*Shaw, Orcas((~~ - Wednesday-Saturday~~))	((~~15.50~~)) 15.95	((~~9.90~~)) 10.20	((~~4.30~~)) 4.45	((~~116.25~~)) 119.65
((~~*Friday Harbor - Sunday-Tuesday~~	~~15.10~~	~~10.05~~	~~5.00~~	~~125.65~~))
*Friday Harbor((~~ - Wednesday-Saturday~~))	((~~16.75~~)) 17.20	((~~11.15~~)) 11.45	((~~5.55~~)) 5.70	((~~125.65~~)) 129.00
Between Lopez, Shaw, Orcas and Friday Harbor[3]	((~~5.10~~)) 5.35	((~~5.10~~)) 5.35	((~~5.10~~)) 5.35	N/A
Anacortes to Sidney and Sidney to all destinations	((~~21.95~~)) 22.55	((~~13.75~~)) 14.10	((~~5.55~~)) 5.70	N/A
Travelers with advanced reservations ($15 fee) Anacortes to Sidney and Sidney to all destinations[6]	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((~~7.55~~)) 7.75	((~~4.45~~)) 4.60	((~~1.40~~)) 1.45	N/A
Travelers with advanced reservations ($7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney [6]	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)[5]	((~~29.50~~)) 30.30	((~~18.20~~)) 18.70	((~~6.95~~)) 7.15	N/A

All fares rounded to the next multiple of $0.05.

* These routes operate as a one-point toll collection system.

[1]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 overheight 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 oversize 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 identification 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.

[2]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.

[3]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.

[4]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.

[5]ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

[6] 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 May 1 ((~~to the second Sunday in October~~)) through September 30 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.

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. 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 09-19-044, filed 9/10/09, effective 10/11/09)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. ((~~October 11, 2009~~)) January 1, 2011

Oversize Vehicle Ferry Tolls[1]
Overall Unit Length - Including Driver

ROUTES	20' To Under 30' Under 7'6" High	20' To Under 30' 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' @
Fauntleroy-Southworth	((~~13.75~~))	((~~27.45~~))	((~~36.60~~))	((~~45.75~~))	((~~54.90~~))	((~~64.05~~))	((~~73.20~~))	((~~0.90~~))
Port Townsend/Keystone	14.05	28.05	37.40	46.75	56.10	65.45	74.80	0.95
Seattle-Bainbridge Island								
Seattle/Bremerton	((~~17.80~~))	((~~35.55~~))	((~~47.40~~))	((~~59.25~~))	((~~71.10~~))	((~~82.95~~))	((~~94.80~~))	
Edmonds-Kingston	18.25	36.45	48.60	60.75	72.90	85.05	97.20	1.20
*Fauntleroy-Vashon								
*Southworth-Vashon	((~~22.80~~))	((~~45.60~~))	((~~60.80~~))	((~~76.00~~))	((~~91.20~~))	((~~106.40~~))	((~~121.60~~))	
*Pt. Defiance-Tahlequah	23.35	46.65	62.20	77.75	93.30	108.85	124.40	1.55

Oversize Vehicle Ferry Tolls[1]
Overall Unit Length - Including Driver

ROUTES	20' To Under 30' Under 7'6" High	20' To Under 30' 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' @
Mukilteo-Clinton	((~~10.50~~)) 10.80	((~~21.00~~)) 21.60	((~~28.00~~)) 28.80	((~~35.00~~)) 36.00	((~~42.00~~)) 43.20	((~~49.00~~)) 50.40	((~~56.00~~)) 57.60	0.70
((~~*Anacortes to Lopez - Sunday-Tuesday[2]~~	~~36.85~~	~~73.65~~	~~98.20~~	~~122.75~~	~~147.30~~	~~171.85~~	~~196.40~~	~~2.50~~
~~*Anacortes to Shaw, Orcas - Sunday-Tuesday[2]~~	~~44.20~~	~~88.35~~	~~117.80~~	~~147.25~~	~~176.70~~	~~206.15~~	~~235.60~~	~~2.95~~
~~*Anacortes to Friday Harbor - Sunday-Tuesday~~	~~52.60~~	~~105.15~~	~~140.20~~	~~175.25~~	~~210.30~~	~~245.35~~	~~280.40~~	~~3.55~~))
*Anacortes to Lopez((~~-Wednesday-Saturday~~))[2]	((~~40.90~~)) 41.95	((~~81.75~~)) 83.85	((~~109.00~~)) 111.80	((~~136.25~~)) 139.75	((~~163.50~~)) 167.70	((~~190.75~~)) 195.65	((~~218.00~~)) 223.60	((~~2.75~~)) 2.80
*Anacortes to Shaw, Orcas((~~-Wednesday-Saturday~~))[2]	((~~49.05~~)) 50.35	((~~98.10~~)) 100.65	((~~130.80~~)) 134.20	((~~163.50~~)) 167.75	((~~196.20~~)) 201.30	((~~228.90~~)) 234.85	((~~261.60~~)) 268.40	((~~3.30~~)) 3.35
*Anacortes to Friday Harbor((~~-Wednesday-Saturday~~))	((~~58.35~~)) 59.80	((~~116.70~~)) 119.55	((~~155.60~~)) 159.40	((~~194.50~~)) 199.25	((~~233.40~~)) 239.10	((~~272.30~~)) 278.95	((~~311.20~~)) 318.80	((~~3.90~~)) 4.00
Between Lopez, Shaw, Orcas and Friday Harbor[3]	((~~26.95~~)) 28.15	((~~53.85~~)) 56.25	((~~71.80~~)) 75.00	((~~89.75~~)) 93.75	((~~107.70~~)) 112.50	((~~125.65~~)) 131.25	((~~143.60~~)) 150.00	N/A
International Travel								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	((~~66.10~~)) 67.75	((~~66.10~~)) 67.75	((~~88.10~~)) 90.30	((~~110.15~~)) 112.90	((~~132.15~~)) 135.45	((~~154.20~~)) 158.05	((~~176.20~~)) 180.60	2.25
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	((~~66.10~~)) 67.75	((~~132.15~~)) 135.45	((~~176.20~~)) 180.60	((~~220.25~~)) 225.75	((~~264.30~~)) 270.90	((~~308.35~~)) 316.05	((~~352.40~~)) 361.20	((~~4.45~~)) 4.50
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	((~~19.75~~)) 20.25	((~~19.75~~)) 20.25	((~~26.30~~)) 27.00	((~~32.90~~)) 33.75	((~~39.45~~)) 40.50	((~~46.05~~)) 47.25	((~~52.60~~)) 54.00	0.70
- Commercial Vehicles	((~~19.75~~)) 20.25	((~~39.45~~)) 40.50	((~~52.60~~)) 54.00	((~~65.75~~)) 67.50	((~~78.90~~)) 81.00	((~~92.05~~)) 94.50	((~~105.20~~)) 108.00	1.35
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)[4] - Recreational Vehicles and Buses	((~~85.85~~)) 88.00	((~~85.85~~)) 88.00	((~~114.40~~)) 117.30	((~~143.05~~)) 146.65	((~~171.60~~)) 175.95	((~~200.25~~)) 205.30	((~~228.80~~)) 234.60	((~~2.90~~)) 2.95
- Commercial Vehicles	((~~85.85~~)) 88.00	((~~171.60~~)) 175.95	((~~228.80~~)) 234.60	((~~286.00~~)) 293.25	((~~343.20~~)) 351.90	((~~400.40~~)) 410.55	((~~457.60~~)) 469.20	((~~5.80~~)) 5.85

[1]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.

[2]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: ((~~October 11, 2009 - October 9, 2010, $58.25~~)) $59.50 base season, $((~~78.75~~)) 80.25 peak season.

[3]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.

[4]ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

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~~)) through September 30. 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 09-19-044, filed 9/10/09, effective 10/11/09)

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 ((~~October 11, 2009~~)) July 1, 2010, through June 30, ((~~2010~~)) 2011:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	$((~~1,791.00~~)) 1,911.00	$((~~1,481.00~~)) 1,615.00
Jumbo	((~~1,742.00~~)) 1,862.00	((~~1,446.00~~)) 1,580.00
Super	((~~1,650.00~~)) 1,755.00	((~~1,365.00~~)) 1,483.00
Evergreen	((~~1,153.00~~)) 1,189.00	((~~925.00~~)) 972.00
Issaquah	((~~1,256.00~~)) 1,313.00	((~~1,019.00~~)) 1,086.00
Rhododendron	((~~874.00~~)) 885.00	((~~694.00~~)) 713.00
Hiyu	((~~651.00~~)) 657.00	((~~531.00~~)) 541.00

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 10-20-151
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 09-01—Filed October 6, 2010, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-077.

Title of Rule and Other Identifying Information: Chapter 173-400 WAC, General regulations for air pollution sources.

Hearing Location(s): Department of Ecology, Headquarters Building, Room OA-32, 300 Desmond Drive, Lacey, WA, and Spokane - via video conference, Department of Ecology, Eastern Regional Office, 4601 North Monroe Street, Spokane, WA, on November 9, 2010, at 6:00 p.m.

Date of Intended Adoption: December 1, 2010.

Submit Written Comments to: Linda Whitcher, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail linda.whitcher@ecy.wa.gov, fax (360) 407-7534, by November 12, 2010.

Assistance for Persons with Disabilities: Contact the air quality program at (360) 407-6800, by October 25, 2010. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

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

- Bring the rule into compliance with United States Environmental Protection Agency (EPA) regulations including standards for excess emissions, major stationary sources located in a nonattainment area, and updating the date of federal regulations adopted by reference;
- Set a new exemption level for greenhouse gas emissions and particulate matter, $PM_{2.5}$, below which permitting is not required;
- Create a program allowing interjurisdictional recognition of permits for portable sources;
- Keep the rule correlated with recent updates to related WAC;
- Update definitions to match current state and federal regulations;
- Clarify the permitting program for nonroad engines;
- Establish a permitting procedure for emergency engines;
- Update the rule to resolve state implementation plan deficiencies, and
- Other housekeeping corrections and changes.

Reasons Supporting Proposal: Ecology is required to keep the rules that implement the Washington Clean Air Act in compliance with EPA regulations. These amendments will bring the rules for new source review into compliance with the federal regulations.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

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

Name of Proponent: Air quality program, department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, Lacey, Washington, (360) 407-6875; Implementation and Enforcement: Rich Hibbard, Lacey, Washington, (360) 407-6896.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule changes are exempt from the small business economic impact statement (SBEIS) because they did not impose additional costs on businesses. Therefore, costs were determined to be below the minor cost threshold definition in RCW 18.85.020 (2). RCW 18.85.030 exempts the department from the requirement to prepare an SBEIS when costs are minor.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Linda Whitcher, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6875, fax (360) 407-7534, e-mail linda.whitcher@ecy.wa.gov.

October 5, 2010

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-030 Definitions. Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:

(1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.

(3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 CFR Part 60, 61, 62, or 63;

(b) Any applicable SIP emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable approval condition, including those with a future compliance date.

(6) **"Ambient air"** means the surrounding outside air.

(7) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(8) **"Approval order"** is defined in **"order of approval."**

(9) **"Attainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(10) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(11) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit ((~~which~~)) that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(13) **"Best available retrofit technology (BART)"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(14) **"Brake horsepower (BHP)"** means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(15) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

((~~(15)~~)) (16) **"Capacity factor"** means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

((~~(16)~~)) (17) **"Class I area"** means any area designated under section 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

(a) Alpine Lakes Wilderness;
(b) Glacier Peak Wilderness;
(c) Goat Rocks Wilderness;
(d) Mount Adams Wilderness;
(e) Mount Rainier National Park;
(f) North Cascades National Park;
(g) Olympic National Park;
(h) Pasayten Wilderness; and
(i) Spokane Indian Reservation.

((~~(17)~~)) (18) **"Combustion and incineration units"** means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

((~~(18)~~)) (19)(a) **"Commence"** as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be ((~~cancelled~~)) canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

((~~(19)~~)) (20) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

((~~(20)~~)) (21) **"Criteria pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O_3) sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

((~~(21)~~)) (22) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

((~~(22)~~)) (23) **"Dispersion technique"** means a method ((~~which~~)) that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

((~~(23)~~)) (24) **"Ecology"** means the Washington state department of ecology.

((~~(24)~~)) (25) **"Emission"** means a release of air contaminants into the ambient air.

((~~(25)~~)) (26) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

(((~~(26)~~))) (27) **"Emission standard"** and **"emission limitation"** means a requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act or chapter 70.94 RCW.

(((~~(27)~~))) (28) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year (((~~tpy~~)))
Nitrogen oxides:	40 (((~~tpy~~))) tons per year
Sulfur dioxide:	40 (((~~tpy~~))) tons per year
Particulate matter (PM):	25 (((~~tpy~~))) tons per year of PM emissions
	15 (((~~tpy~~))) tons per year of PM-10 emissions 10 tons per year of PM-2.5
Volatile organic compounds:	40 (((~~tpy~~))) tons per year
Fluorides:	3 (((~~tpy~~))) tons per year
Lead:	0.6 (((~~tpy~~))) tons per year
Sulfuric acid mist:	7 (((~~tpy~~))) tons per year
Hydrogen sulfide (H_2S):	10 (((~~tpy~~))) tons per year
Total reduced sulfur (including H_2S):	10 (((~~tpy~~))) tons per year
Reduced sulfur compounds (including H_2S):	10 (((~~tpy~~))) tons per year

(((~~(28)~~))) (29) **"Emissions unit"** or **"emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

(((~~(29)~~))) (30) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard.

(((~~(30)~~))) (31) **"Excess stack height"** means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

(((~~(31)~~))) (32) **"Existing stationary facility (Facility)"** is defined in WAC 173-400-151.

(((~~(32)~~))) (33) **"Federal Clean Air Act (FCAA)"** means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(((~~(33)~~))) (34) **"Federal Class I area"** means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

(a) Alpine Lakes Wilderness;
(b) Glacier Peak Wilderness;
(c) Goat Rocks Wilderness;
(d) Mount Adams Wilderness;
(e) Mount Rainier National Park;
(f) North Cascades National Park;
(g) Olympic National Park; and
(h) Pasayten Wilderness.

(((~~(34)~~))) (35) **"Federal land manager"** means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior - National Park Service, the U.S. Department of the Interior - U.S. Fish and Wildlife Service, the U.S. Department of Agriculture - Forest Service, and/or the U.S. Department of the Interior - Bureau of Land Management.

(((~~(35)~~))) (36) **"Federally enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 CFR 52.21 or under a SIP approved new source review regulation, and emissions limitation orders issued under WAC 173-400-091.

(((~~(36)~~))) (37) **"Fossil fuel-fired steam generator"** means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(((~~(37)~~))) (38) **"Fugitive dust"** means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

(((~~(38)~~))) (39) **"Fugitive emissions"** means emissions ((~~which~~)) that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(((~~(39)~~))) (40) **"General process unit"** means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

(((~~(40)~~))) (41) **"Good engineering practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

(((~~(41)~~))) (42) **"Greenhouse gases (GHGs)"** includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the department in chapter 173-441 WAC.

(43) **"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

(((~~(42)~~))) (44) **"In operation"** means engaged in activity related to the primary design function of the source.

(((~~(43) **"Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:~~

~~(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or~~

~~(b) The most stringent emission limitation which is achieved in practice by such class or category of source.~~

~~In no event shall the application of this term allow a proposed new or modified source to emit any pollutant in excess~~

~~of the amount allowable under applicable New Source Performance Standards.~~

~~(44)~~))) (45) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(46) **"Mandatory Class I federal area"** means any area defined in Section 162(a) of the Federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness;

(((~~45~~))) (47) **"Masking"** means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

(((~~46~~))) (48) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

(((~~47~~))) (49) **"Modification"** means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(((~~48~~))) (50) **"National Ambient Air Quality Standard (NAAQS)"** means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(((~~49~~))) (51) **"National Emission Standards for Hazardous Air Pollutants (NESHAPS)"** means the federal rules in 40 CFR Part 61.

(((~~50~~))) (52) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 CFR Part 63.

(((~~51~~))) (53) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

(((~~52~~))) (54) **"New source"** means:

(a) The construction, installation, establishment, or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the Federal Clean Air Act.

(((~~53~~))) (55) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 CFR Part 60.

(((~~54~~))) (56) **"Nonattainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(((~~55~~))) (57) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(((~~56~~))) (58) **"Notice of construction application"** means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

(((~~57~~))) (59) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

(((~~58~~))) (60) **"Outdoor burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners or silo burners is not considered outdoor burning.

(((~~59~~))) (61) **"Order"** means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

(((~~60~~))) (62) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(((~~61~~))) (63) **"Ozone depleting substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

(((~~62~~))) (64) **"Particulate matter"** or **"particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(((~~63~~))) (65) **"Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

(((~~64~~))) (66) **"Parts per million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

(((~~65~~))) (67) **"Permitting authority"** means ecology or the local air pollution control authority with jurisdiction over the source.

(((~~66~~))) (68) **"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(((~~67~~))) (69) **"PM-10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(((~~68~~))) (70) **"PM-10 emissions"** means finely divided solid or liquid material, including ((~~condensible~~)) condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

(((~~69~~))) (71) **"PM-2.5"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(72) **"PM-2.5 emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 53 or by a test method specified in the SIP.

(73) **"Portable source"** means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(74) **"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(((~~70~~))) (75) **"Prevention of significant deterioration (PSD)"** means the program in WAC 173-400-700 to 173-400-750.

(((~~71~~))) (76) **"Projected width"** means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

(((~~72~~))) (77) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

(((~~73~~))) (78) **"Reasonably available control technology (RACT)"** means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(((~~74) **"Regulatory order"** means an order issued by ecology or permitting authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.~~

(~~75~~))) (79) **"Regulatory order"** means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapters 70.94, 80.70 and 80.80 RCW or rules adopted to implement those laws; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

(80) **"Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new or modified major stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(((~~(76)~~))) (81) **"Source"** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(((~~(77)~~))) (82) **"Source category"** means all sources of the same type or classification.

(((~~(78)~~))) (83) **"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(((~~(79)~~))) (84) **"Stack height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

(((~~(80)~~))) (85) **"Standard conditions"** means a temperature of 20°C (((~~68° F~~))) (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(((~~(81)~~))) (86) **"State implementation plan (SIP)"** or **"Washington SIP"** means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

(((~~(82)~~))) (87) **"Stationary source"** means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

(((~~(83)~~))) (88) **"Sulfuric acid plant"** means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(((~~(84)~~))) (89) **"Synthetic minor"** means any source whose potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or approval condition.

(((~~(85) **"Temporary source"** is a source of emissions (such as a nonroad engine) which is operated at a particular site for a limited period of time. A temporary source may or may not be a stationary source or a source as defined in subsections (76) and (82) of this section, respectively.~~

~~(86)~~))) (90) **"Total reduced sulfur (TRS)"** means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 or an EPA approved equivalent method and expressed as hydrogen sulfide.

(((~~(87)~~))) (91) **"Total suspended particulate"** means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

(((~~(88)~~))) (92) **"Toxic air pollutant (TAP)"** or **"toxic air contaminant"** means any ((~~Class A or B~~)) toxic air pollutant listed in WAC 173-460-150 ((~~and 173-460-160~~)). The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 ((~~and/or 173-460-160~~)). The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(((~~(89)~~))) (93) **"Unclassifiable area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

(((~~(90)~~))) (94) **"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

(((~~(91)~~))) (95) **"Visibility impairment"** means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(((~~(92)~~))) (96) **"Volatile organic compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-

hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$, or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500) 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; tertiary-butyl acetate; and perfluorocarbon compounds that fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology or the authority, the amount of negligibly-reactive compounds in the source's emissions.

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-400-035 ((~~Portable and temporary sources.~~)) Nonroad engines. ((~~(1) For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location providing that the owner(s) or operator(s) notifies **ecology** or the **authority** of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable **ecology** or the **authority** to determine that the operation will comply with the **emission standards** for a **new source,** and will not cause a violation of applicable **ambient air quality standards** and, if in a **nonattainment area,** will not interfere with scheduled attainment of **ambient standards.** The permission to operate shall be for a limited period of time (one year or less) and **ecology** or the **authority** may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable **emission standards.** A temporary or portable source that is considered a **major stationary source** within the meaning of WAC 173-400-113 must also comply with the requirements in WAC 173-400-141.~~

~~(2) This section applies statewide except where an authority has its own rule regulating such sources.~~

~~(3) Fees relating to this section can be found in chapter 173-455 WAC.~~)) (1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

(a) Any nonroad engine that is:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function; or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

(b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.

(c) Nonroad engines used to propel a motor vehicle or a vehicle used solely for competition, or subject to standards promulgated under section 202 of the Federal Clean Air Act.

(d) Engines regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act.

(e) Engines that remain or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year.

(2) **Nonroad engines are not subject to:**

(a) New source review.

(b) Control technology determinations.

(c) Emission limits set by the state implementation plan, SIP.

(3) **> 500 and ≤ 2000 BHP.** This section applies to the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

(a) Notification of intent to operate is required before operations begin.

The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:

(i) Name and address of owner or operator;

(ii) Site address or location;

(iii) Date of equipment arrival at the site;

(iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. At each site, the owner or operator must record the following information for each nonroad engine:

(i) Site address or location;

(ii) Date of equipment arrival at the site;

(iii) Date of equipment departure from the site;

(iv) Engine function or purpose;

(v) Identification of each component as follows:

(A) Equipment manufacturer, model number and its unique serial number;

(B) Engine model year;

(vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep on-site the records of the current engine and equipment activity. The owner or operator may keep all other records at the main office. Records must be kept for at least five years and be readily available to the permitting authority on request.

(d) Fuel standards. All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).

(4) **> 2000 BHP.** This section applies to the installation and operation of any nonroad engine with a cumulative maximum rated brake horsepower greater than 2000 BHP.

(a) Notification of intent to operate. Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4).

(b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

(c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (3)(b) and (c) of this section.

(d) Integrated review. Applicants seeking approval to construct or modify a source that requires review under WAC 173-400-110 or 173-400-560 that includes the review of nonroad engines may elect to integrate the reviews. A nonroad engine notification designated for integrated review must be processed in accordance with the ambient air quality and public involvement procedures in WAC 173-400-111.

(e) Fuel standards. All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG).

(f) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

(g) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final decision to the applicant.

(h) Conditions to assure compliance with NAAQS. The permitting authority may set specific conditions for operation as necessary to ensure compliance with National Ambient Air Quality Standards as regulated by WAC 173-400-113 (3) and (4).

(i) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

(j) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

NEW SECTION

WAC 173-400-036 Relocation of portable sources. (1) **Applicability.**

(a) Portable sources that meet the requirements of this section may without obtaining a site-specific or permitting authority-specific order of approval relocate and operate in any jurisdiction in which the permitting authority has adopted these rules. The owner or operator of a portable source may file a new notice of construction application in compliance with WAC 173-400-110 each time the portable source relocates in lieu of participating in the inter-jurisdictional provisions in this section.

(b) Permitting authority participation in the inter-jurisdictional provisions of this section is optional. This section applies only in those jurisdictions where the permitting authority has adopted it. Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here except that subsection (2) of this section applies statewide.

(c) This section applies to sources that move from the jurisdiction of one permitting authority to the jurisdiction of another permitting authority, inter-jurisdictional relocation. This section does not apply to intra-jurisdictional relocation.

(2) **Portable sources in nonattainment areas.** If a portable source is locating in a nonattainment area and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, then the source must acquire a site-specific order of approval. The order of approval must be issued by the permitting authority with jurisdiction over the nonattainment area in which the portable source wishes to locate.

(3) **Relocation requirements.** Portable sources are allowed to operate at a new location without obtaining an order of approval from the permitting authority with jurisdiction over the new location provided that:

(a) A permitting authority in Washington state issued a notice of construction order of approval for the portable source after July 1, 2010, identifying the emission units as a "portable source";

(b) The owner/operator of the portable source submits a relocation notice and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction

over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location;

(c) The owner/operator submits the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the preceding year. The data must be sufficient in detail to enable each permitting authority to calculate the emissions within its jurisdiction and the yearly aggregate.

(4) **Enforcement of the order of approval.** The permitting authority with jurisdiction over the location where a portable source is operating has authority to enforce the conditions of the order of approval that authorizes the portable source operation, regardless of which permitting authority issued the order of approval. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

(5) **Change of conditions to orders of approval.** To change the conditions in an order of approval, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

(6) **Portable source modification.** Prior to commencing construction or installation of a modification of a portable source, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-040 General standards for maximum emissions. (1) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard ((~~will~~)) takes precedent over a general emission standard listed in this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

((~~Further,~~)) All emissions units are required to use reasonably available control technology (RACT) which may be ((~~determined for some sources or source categories to be~~)) more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, ((~~ecology or~~)) the permitting authority shall, as provided in RCW ((~~70.194.154 [RCW 70.94.154]~~)) 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

((~~(1)~~)) (2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ((~~ecology or~~)) the permitting authority must be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more emission units are connected to a common stack, ((~~ecology or~~)) the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 CFR Part 60, Appendix A, Reference Method 9 and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Military training exercises. Visible emissions resulting from military obscurant training exercises ((~~is~~)) are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(iii) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter 173-425 WAC.

((~~(2)~~)) (3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

((~~(3)~~)) (4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(((~~(4)~~))) (5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(((~~(5)~~))) (6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(((~~(6)~~))) (7) **Sulfur dioxide.**

No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ((~~ecology or~~)) the permitting authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ((~~ecology or~~)) the permitting authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ((~~ecology or~~)) the permitting authority.

(((~~(7)~~))) (8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(((~~(8)~~))) (9) **Fugitive dust.**

(a) The owner or operator of a source ((~~of~~)) or activity that generates fugitive dust ((~~shall~~)) must take reasonable precautions to prevent that fugitive dust from becoming airborne and ((~~shall~~)) must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source ((~~of~~)) or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area ((~~shall be~~)) is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113 (2)(c).

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA method 5 in Appendix A to 40 CFR Part 60, (in effect on July 1, ((~~2004~~)) 2010) or approved procedures contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of ((~~July 12, 1990~~)) September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of ((~~July 12, 1990~~)) September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority ((~~or ecology~~)) prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements adopted by reference in WAC 173-400-075 (40 CFR 63 subpart EEE) and WAC 173-400-115 (40 CFR 60 subparts E, Ea, Eb, Ec, AAAA, and CCCC) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of ((~~July 12, 1990~~)) September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when ((~~ecology or~~)) the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. (((~~See WAC 173-400-115(2) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.~~)))

(a) Definitions.

(i) **"Commercial and industrial solid waste incineration (CISWI) unit"** means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the

commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) **"Commercial and industrial solid waste"** means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on ((~~January 30, 2001~~)) July 1, 2010) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 CFR Part 60, subpart Ea or subpart Eb (in effect on July 1, ((~~2000~~)) 2010); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 CFR Part 60, subpart AAAA (((~~adopted on December 6, 2000 and in effect on June 1, 2001~~)) in effect on July 1, 2010); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, subparts Ea (in effect on July 1, ((~~2000~~)) 2010), Eb (in effect on July 1, ((~~2000~~)) 2010), and AAAA (((~~adopted on December 6, 2000 and in effect on June 1, 2001~~)) in effect on July 1, 2010), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 CFR Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, ((~~2000~~)) 2010);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, ((~~2000~~)) 2010).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements

under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on ((~~January 30, 2001~~)) July 1, 2010).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 CFR 60.2265 (in effect on ((~~January 30, 2001~~)) July 1, 2010).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on ((~~January 30, 2001~~)) July 1, 2010).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, ((~~2000~~)) 2010).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, ((~~2000~~)) 2010).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (H) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on ((~~January 30, 2001~~)) July 1, 2010).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on ((~~January 30, 2001~~)) July 1, 2010) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115(((~~(2)~~))), which adopts 40 CFR Part 60, subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on ((~~January 30, 2001~~)) July 1, 2010, which is adopted by reference. The federal rule contains these major components:

• Increments of progress towards compliance in 60.2575 through 60.2630;

• Waste management plan requirements in 60.2620 through 60.2630;

• Operator training and qualification requirements in 60.2635 through 60.2665;

• Emission limitations and operating limits in 60.2670 through 60.2685;

• Performance testing requirements in 60.2690 through 60.2725;

• Initial compliance requirements in 60.2700 through 60.2725;

• Continuous compliance requirements in 60.2710 through 60.2725;

• Monitoring requirements in 60.2730 through 60.2735;

• Recordkeeping and reporting requirements in 60.2740 through 60.2800;

• Title V operating permits requirements in 60.2805;

• Air curtain incinerator requirements in 60.2810 through 60.2870;

• Definitions in 60.2875; and

• Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. (((~~(See WAC 173-400-115(2) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)~~)))

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combus-

tion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (d)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (d)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on ((~~February 5, 2001~~)) July 1, 2010).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on ((~~February 5, 2001~~)) July 1, 2010) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on ((~~February 5, 2001~~)) July 1, 2010).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on ((~~February 5, 2001~~)) July 1, 2010).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on ((~~February 5, 2001~~)) July 1, 2010), mean the unit is considered a new unit and subject to WAC 173-400-115((~~(2)~~)), which adopts 40 CFR Part 60, subpart AAAA (in effect on ((~~June 6, 2001~~)) July 1, 2010).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on ((~~February 5, 2001~~)) July 1, 2010) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on ((~~February 5, 2001~~)) July 1, 2010) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on ((~~February 5, 2001~~)) July 1, 2010).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on ((~~February 5, 2001~~)) July 1, 2010) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on ((~~February 5, 2001~~)) July 1, 2010) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on ((~~February 5, 2001~~)) July 1, 2010), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - operator training in 60.1645 through 60.1670;

(C) Good combustion practices - operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) ((~~Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule.~~

(~~E~~))) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must ((~~comply with Table 1~~)) achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

((~~Table 1 Compliance Schedules and Increments of Progress~~

~~Affected units~~	~~Increment 1 (Submit final control plan)~~	~~Increment 2 (Award contracts)~~	~~Increment 3 (Begin on-site construction)~~	~~Increment 4 (Complete on-site construction)~~	~~Increment 5 (Final compliance)~~
~~All Class I units~~	~~August 6, 2003~~	~~April 6, 2004~~	~~October 6, 2004~~	~~October 6, 2005~~	~~November 6, 2005~~
~~All Class II units~~	~~September 6, 2003~~	~~Not applicable~~	~~Not applicable~~	~~Not applicable~~	~~May 6, 2005~~))

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on ((~~February 5, 2001~~)) July 1, 2010).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, subpart BBBB (in effect on February 5, 2001) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.**

(a) All wigwam and silo burners ((~~shall~~)) designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), and WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) as applicable.

(b) All wigwam and silo burners ((~~shall~~)) must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) ((~~Ecology~~)) The permit authority may establish additional requirements for wigwam ((~~burners located in sensitive areas as defined by chapter 173-440 WAC~~)) and silo burners. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040((~~(1)~~)) (2), visible emissions. An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) **Grain elevators.**

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Catalytic cracking units.**

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) **Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) must meet all applicable provisions of those sections.

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(7) **Sulfuric acid plants.**

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H_2SO_4.

(8) **Sewage sludge incinerators.** Standards for the incineration of sewage sludge found in 40 CFR Part 503 subparts A (General Provisions) and E (Incineration) in effect on July 1, ((~~2004~~)) 2010, are adopted by reference.

(9) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115((~~(2)~~)) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submittal of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 CFR 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 CFR Part 61 and Appendices in effect on ((~~October 1, 2006, is~~)) July 1, 2010, are adopted by reference. The term "administrator" in 40 CFR Part 61 includes the permitting authority.

(2) The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Parts 61, 62, 63 and((~~/or~~)) 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 CFR Parts 61, 62, 63 and((~~/or~~)) 65.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) ((~~Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Parts 61 or 63, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.~~

(6) **~~Maximum achievable control technology (MACT) standards.~~** ~~MACT standards are officially known as~~)) EPA can delegate its authority to a permitting authority to receive reports for one or all of these federal rules. Do not send a duplicate report to EPA if EPA delegated authority to your permitting authority for the rule you are reporting under, unless EPA or your permitting authority tells you to do so.

(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

(((~~(a)~~))) Adopt by reference.

(a) 40 CFR Part 63 and Appendices in effect on ((~~October 1, 2006, is~~)) July 1, 2010, as they apply to major stationary sources of hazardous air pollutants are adopted by reference. ((~~Exceptions are listed in (6)(b) of this section.~~

~~The following list of subparts to 40 CFR 63 which are shown as blank or reserved as of the date listed above, is provided for informational purposes only: Subparts K, P, V, Z, FF, NN, ZZ, AAA, BBB, FFF, KKK, SSS, WWW, YYY, ZZZ, BBBB, LLLL, and OOOOO.~~

~~(b) Exceptions to adopting 40 CFR Part 63 by reference.~~

~~(i) The term "administrator" in 40 CFR Part 63 includes the permitting authority.~~

~~(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:~~

~~(A) Subpart C: List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List.~~

~~(B) Subpart E: Approval of State Programs and Delegation of Federal Authorities.~~

~~(C) Subpart M: National Perchloroethylene Emission Standards for Dry Cleaning Facilities as it applies to nonmajor sources.~~)) The term "administrator" in 40 CFR Part 63 includes the permitting authority.

(b) 40 CFR Part 63 and Appendices in effect on July 1, 2010, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:

(i) Subpart EEEEEE, Primary Copper Smelting;

(ii) Subpart FFFFFF, Secondary Copper Smelting;

(iii) Subpart GGGGGG, Primary Nonferrous Metal;

(iv) Subpart SSSSSS, Pressed and Blown Glass Manufacturing;

(v) Subpart YYYYY, Stainless and Nonstainless Steel Manufacturing (electric arc furnace);

(vi) Subpart EEE, Hazardous Waste Incineration;

(vii) Subpart IIIII, Mercury Cell Chlor-Alkali Plants;

(viii) Subpart LLL, Portland Cement; and

(ix) Subpart X, Secondary Lead Smelting.

(7) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** 40 CFR Part 65, in effect on ((~~October 1, 2006~~)) July 1, 2010, is adopted by reference.

(8) **Emission standards for perchloroethylene dry cleaners.**

(a) **Applicability.**

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 regulatory source categories by the type of equipment they use and the volume of PCE purchased. Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE ((~~1.~~)) (8)(a) PCE Dry Cleaner Source Categories

Dry cleaning facilities with:		Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(((~~(1)~~)))	Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(((~~(2)~~	~~Only Transfer Machines~~	~~200 gallons PCE/yr~~	~~200-1,800 gallons PCE/yr~~	~~1,800 gallons PCE/yr~~
~~(3)~~	~~Both Dry-to-Dry and Transfer Machines~~	~~140 gallons PCE/yr~~	~~140-1,800 gallons PCE/yr~~	~~1,800 gallons PCE/yr~~))

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, ((~~2001~~)) 2010).

(((~~(b)~~))) (iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) **Operations and maintenance record.**

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(((~~(c)~~))) (d) **General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.	Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.

((~~(d)~~)) (e) **Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Once every 2 weeks.	Once every week.	Once every week.	Once every week.

TABLE 4. Minimum Inspection Frequency Using Portable Leak Detector

Small area source	Large area source	Major source	Dry cleaner located in a building where people may live
Once every month.	Once every month.	Once every month.	Once every week.

(ii) ((~~An inspection must include an examination of~~)) You must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of percholoroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

((~~(iii)~~)) (iv) The dry cleaning system must be inspected while it is operating.

((~~(iv)~~)) (v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

((~~(e)~~)) (f) **Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

((~~(f)~~)) (g) **Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

((~~(g)~~)) (h) **Requirements for systems with carbon adsorbers.** A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-081 Startup and shutdown. In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) ((~~ecology and~~)) as part of new source review the permitting authorities ((~~shall~~)) will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

Where ((~~ecology or~~)) the permitting authority, during a control technology determination, determines that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission standard during startup or shutdown, ((~~ecology or~~)) the permitting authority ((~~shall~~)) must include in the standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions.

In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, ((~~ecology and~~)) the permitting authorities shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule.

Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in an approved state implementation plan shall not take effect until approved by EPA as a SIP amendment.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-091 Voluntary limits on emissions. (1) Upon request by the owner or operator of a new or existing source, ((~~ecology or~~)) the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the source's potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and ((~~ecology or~~)) the permitting authority with jurisdiction over the source.

(2) A condition contained in an order issued under this section shall be less than the source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70.94 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements suffi-

cient to ensure that the source complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

(4) Any order issued under this section ((~~shall be subject to the notice and comment procedures under~~)) must comply with WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington state implementation plan. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-099 Registration program. (1) Program purpose.

(a) The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(b) Permit program sources, as defined in RCW 70.94.030((~~(17)~~)) (18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

(2) Program components. The components of the registration program consist of:

(a) Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter 70.94 RCW.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

(e) Staff review, including engineering analysis for accuracy and currentness of information provided by source owners pursuant to registration program requirements.

(f) Clerical and other office support in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

WAC 173-400-101 Registration issuance. (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required shall register the source emission unit with ecology or the authority. The owner or operator shall make reports containing information as may be required by ecology or the authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration form. Registration information shall be provided on forms supplied by ecology or the authority and shall be completed and returned within the time specified on the form. Emission units within the facility shall be listed separately unless ecology or the authority determines that certain emission units may be combined into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative shall sign the registration form for each source. The owner or operator of the source shall be responsible for notifying ecology or the authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction shall maintain an operation and maintenance plan for process and control equipment. The plan shall reflect good industrial practice and shall include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan shall be reviewed and updated by the source owner or operator at least annually. A copy of the plan shall be made available to ecology upon request.

(5) Report of closure. A report of closure shall be filed with ecology or the authority within ninety days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator shall report to ecology or the authority within ninety days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW 70.94.030((~~(17)~~))(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-102 Scope of registration and reporting requirements. (1) **Administrative options.** A source in a listed source category that is located in a county without an active local authority will be addressed in one of several ways:

(a) The source will be required to register and report once each year. The criteria for identifying these sources are listed in subsection (2) of this section.

(b) The source will be required to register and report once every three years. The criteria for identifying these sources are listed in subsection (3) of this section.

(c) The source will be exempted from registration program requirements. The criteria for identifying these sources are listed in subsection (4) of this section.

(2) **Sources requiring annual registration and inspections.** An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once each year:

(a) The source emits one or more air pollutants at rates greater than the "emission threshold" rates defined in WAC 173-400-030;

(b) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

(c) Annual registration and reporting is required in a reasonably available control technology determination for the source category; or

(d) The director of ecology determines that the source poses a potential threat to human health and the environment.

(3) **Sources requiring periodic registration and inspections.** An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once every three years:

(a) The source emits one or more air pollutants at rates greater than the emission rates listed in subsection (5) of this section and all air pollutants at rates less than the "emission threshold" rates defined in WAC 173-400-030; or

(b) ((~~The source emits measurable~~)) More than de minimis amounts of one or more ((~~Class A or Class B~~)) toxic air pollutants listed in WAC 173-460-150 ((~~and 173-460-160~~)).

(4) **Sources exempt from registration program requirements.** Any source included in a listed source category that is located in a county without an active local air authority ((~~shall~~)) is not ((~~be~~)) required to register if ((~~ecology determines the following~~)):

(a) The source emits pollutants below emission rates specified in subsection (5) of this section; and

(b) The source or emission unit does not emit ((~~measurable~~)) more than de minimis amounts of ((~~Class A or Class B~~)) toxic air pollutants specified in WAC 173-460-150 ((~~and 173-460-160~~)).

(5) **Criteria for defining exempt sources.** The following emission rates will be used to identify listed sources that are exempt from registration program requirements:

Pollutant	Tons/Year
Carbon Monoxide	5.0
((~~Nitrogen oxides~~)) Lead	((~~2.0~~)) 0.005
((~~Sulfur dioxide~~)) Nitrogen oxides	2.0
((~~Particulate Matter (PM)~~)) PM-10	((~~1.25~~)) 0.75
PM-2.5	0.5
((~~Fine Particulate **(PM10)**~~)) Total suspended particulates	((~~0.75~~)) 1.25
((**~~Volatile organic compounds (VOC)~~**)) Sulfur dioxide	2.0
((~~Lead~~)) Volatile organic compounds (VOC)	((~~0.005~~)) 2.0

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-400-104 Registration fees. ((~~Fees can be found in chapter 173-455 WAC.~~)) See chapter 173-455 WAC for ecology's registration fee schedule.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 CFR parts 51, 60, 61 and 63 (in effect on ((~~October 1, 2006~~)) July 1, 2010) procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of ((~~July 12, 1990~~)) September 20, 2004, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (in effect on July 1, ((~~2004~~)) 2010).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any ((~~equipment subject to: Continuous emissions monitoring requirement imposed by~~)) emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement ((~~under~~)) contained in 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

((~~(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of the permitting authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.~~))

(6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

(7) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(8) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required under an order, PSD permit, operating permit, or regulation issued by a permitting authority and not required by 40 CFR Parts 60, 61, 62, 63, or 75, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect on July 1, 2010, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute averages. All monitoring data will be included in these averages except for data collected during calibration draft tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit.

(d) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(e) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. This report shall include:

(i) The date, time period, magnitude (in the units of the standard) and cause of each emission that exceeded an applicable emission standard;

(ii) The date and time for all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;

(iii) The number of hours that the equipment (required to be monitored) operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(iv) The date and time of all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;

(v) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(vi) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(vii) The results of all cylinder gas audits conducted during the month; and

(viii) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(9) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-107 Excess emissions. This section is in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section. This section is not effective starting on that date.

(1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.

(2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.

(3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(6) Excess emissions due to upsets shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

NEW SECTION

WAC 173-400-108 Excess emissions reporting. This section is not in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.

(1) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable, per the criteria under WAC 173-400-109, must be reported to the permitting authority as soon as possible, but in no case later than twelve hours after the excess emissions were discovered. Other excess emissions must be reported to the permitting authority within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615.

(2) For those sources not required to report under WAC 173-401-615, the report must contain at least the following information:

(a) Date, time, duration of the episode;

(b) Known causes;

(c) For exceedances of nonopacity emission limitations, an estimate of the quantity of excess emissions;

(d) The corrective actions taken; and

(e) The preventive measures taken or planned to minimize the chance of recurrence.

(3) For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must include the following information in addition to that required in subsection (2) of this section:

(a) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage;

(c) Any additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

NEW SECTION

WAC 173-400-109 Unavoidable excess emissions. This section is not in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, regulation, permit, or regulatory order. Unavoidable excess emissions are subject to injunctive relief but not penalty.

(2)(a) The owner or operator of a source shall have the burden of proving to the permitting authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (3), (4) and (5) of this section.

(b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.

(c) This section does not apply to exceedances of emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal standards.

(d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.

(3) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:

(a) Excess emissions could not have been prevented through careful planning and design;

(b) Startup or shutdown was done as expeditiously as practicable;

(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;

(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and

(f) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under subsection (5) of this section.

(4) Maintenance. Excess emissions during scheduled maintenance will be considered unavoidable if the source reports as required by WAC 173-400-108 and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(5) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(c) The operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and

(d) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage.

AMENDATORY SECTION (Amending Order 05-19, filed 5/20/09, effective 6/20/09)

WAC 173-400-110 New source review (NSR) for sources and portable sources. ((~~In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.~~))

(1) **Applicability.**

(a) This section, WAC ((~~173-400-112~~)) 173-400-111 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

(b) This section applies to sources and stationary sources as defined in RCW 70.94.030((~~(22), but does not include nonroad engines. Nonroad engines are regulated under WAC 173-400-035.~~

~~(2) **Projects subject to NSR—notice of construction application.**~~

~~(a) A notice of construction application must be filed by the owner or operator and an order of approval issued by the permitting authority prior to beginning actual construction of any new source, except for the following:~~

~~(i) Those sources exempt under subsection (4) or (5) of this section; and~~

~~(ii) A source regulated under WAC 173-400-035.~~)) and WAC 173-400-030.

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;

(ii) "New source" includes ((~~any~~)):

(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030((~~, and any new or modified toxic air pollutant source, as defined in WAC 173-460-020.~~

~~(b) Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the permitting authority prior to beginning actual construction of any of the following new sources:~~

~~(i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except subpart AAA, Wood stoves and except subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines) and subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) as they apply to emergency stationary internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(ii) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants) (in effect on July 1, 2004), except for asbestos demolition and renovation projects subject to 40 CFR 61.145, and except from sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I;~~

~~(iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories) except subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) as it applies to emergency or limited use stationary reciprocating internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(iv) Any project that qualifies as a new major stationary source, or a major modification to a major stationary source subject to the requirements of WAC 173-400-112;~~

~~(v) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.~~

~~(c) An applicant filing a notice of construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, must send a copy of the application to the responsible federal land manager.~~)):

(B) A portable source as defined under WAC 173-400-030; and

(C) A new or modified toxic air pollutant source, as defined under WAC 173-460-020.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications and orders of approval for sources that are not major sources shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9) or during a department-conducted remedial action, through the procedures outlined in WAC 173-340-710(9).

(2) Requirements for new sources, modifications to existing sources, new major stationary sources and major modifications to sources.

(a) A nonattainment new source review approval issued per the requirements of WAC 173-400-830 is required for those pollutants to be emitted by the proposed new source or stationary source for which the area is classified as nonattainment if:

(i) The proposed new source is a major stationary source per the criteria in WAC 173-400-810 and 173-400-820; or

(ii) The proposed modification to a stationary source is a major modification to a major source per the criteria in WAC 173-800-810 and 173-400-820.

(b) A PSD permit issued per the requirements of WAC 173-400-730 is required for those pollutants to be emitted by the proposed new source or stationary source for which the area is classified as attainment or unclassified if:

(i) The new source is a major stationary source per the criteria in WAC 173-400-710 and 173-400-720; or

(ii) The proposal is a major modification per the criteria of WAC 173-400-710 and 173-400-720.

(c) A notice of construction order of approval must be issued by the permitting authority prior to the establishment of any new source except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.

(3) **Modifications and change of conditions.**

(a) New source review ((~~of a modification is limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-720, as applicable~~)) is required for any modification to a stationary source that requires an increase in a plant-wide cap or causes an increase in a unit specific emission limit.

(b) All sources regulated by ecology must submit a notice of construction application when requesting a change of conditions.

(4) **Emission unit and activity exemptions.**

((~~Except as provided in subsection (2) of this section,~~)) The construction or modification of emission units in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission unit exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

(iv) Paving application and maintenance((~~, excluding asphalt plants~~)). Except that asphalt plants are not exempt from this section;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, ((~~routine~~)) house keeping, ((~~routine~~)) plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application and maintenance;

(viii) Insulation application and maintenance((~~, excluding products for resale~~));

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that are not related to new or modified stationary sources or portable stationary sources.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks ((~~except those facilities that are wholesale or retail~~)). Except that wholesale distributors of lubricating oils are not exempt from this section;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 ((~~eft~~)) cubic feet);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as ((~~defined~~)) listed in chapter 173-460 WAC, max. VP 550 mm ((~~Hg @~~)) mercury at 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) ((~~A project~~)) New or modified emission units with combined aggregate heat inputs of combustion units (excluding emergency engines exempted by subsection (4)((~~(h)~~)) (g)(xxxix) of this section), ((~~≤~~)) less than or equal to all of the following:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr using used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr using wood waste or paper;

(iv) ≤ 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with ≤0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm ((~~Hg @~~)) mercury at 21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers ((~~not using toxic air pollutant gases, as regulated under~~)) using only gases that are not toxic air pollutants listed in chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or modification of a single laboratory fume hood;

(iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

(v) Laboratory calibration and maintenance equipment.

(g) Monitoring/quality assurance/testing:

(i) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(ii) Hydraulic and hydrostatic testing equipment;

(iii) Sample gathering, preparation and management;

(iv) Vents from ((~~continuous~~)) emission monitors and other analyzers.

(h) Miscellaneous:

(i) Single-family residences and duplexes;

(ii) Plastic pipe welding;

(iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(iv) Comfort air conditioning;

(v) Flares used to indicate danger to the public;

(vi) Natural and forced air vents and stacks for bathroom/toilet activities;

(vii) Personal care activities;

(viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(ix) Tobacco smoking rooms and areas;

(x) Noncommercial smokehouses;

(xi) Blacksmith forges for single forges;

(xii) Vehicle maintenance activities, not including vehicle surface coating;

(xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);

(xiv) Wax application;

(xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(xvi) Ozone generators and ozonation equipment;

(xvii) Solar simulators;

(xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

(xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(xx) Pulse capacitors;

(xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

(xxii) Fire suppression equipment;

(xxiii) Recovery boiler blow-down tank;

(xxiv) Screw press vents;

(xxv) Drop hammers or hydraulic presses for forging or metal working;

(xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

(xxvii) Kraft lime mud storage tanks and process vessels;

(xxviii) Lime grits washers, filters and handling;

(xxix) Lime mud filtrate tanks;

(xxx) Lime mud water;

(xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) ((~~Nontoxic air pollutant, as defined in chapter 173-460 WAC,~~)) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm ((~~Hg @~~)) mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;

(xxxiv) Surface coating, aqueous solution or suspension containing ≤ 1% (by weight) VOCs, ((~~and/~~))or ≤ 1% (by weight) toxic air pollutants as ((~~defined~~)) listed in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ≤ 1% VOCs (by weight)((~~;~~)) or ≤ 1% (by weight) toxic air pollutants. Acid solutions used on metallic substances((~~, acid solutions~~)) are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) ((~~and/~~))or ≤ 1% (by weight) toxic air pollutants as ((~~defined~~)) listed in chapter 173-460 WAC.

(xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency ((~~generators powered by~~)) internal combustion engines with ((~~a maximum power of~~)) an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities ((~~(GDFs) regulated by chapter 173-491 WAC~~)) with annual gasoline throughputs less than those specified in WAC 173-491-040 (4)(a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) **Exemptions based on emissions.**

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in the table contained in (d) of this subsection is exempt from new source

review ((~~provided that the conditions of (b) of this subsection are met~~)).

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in ((~~the table contained in (d)~~)) Table 110(5) Exemption levels of this subsection is exempt from new source review ((~~provided that the conditions of (b) of this subsection are met~~)).

(b) ((~~The owner or operator seeking to exempt a project from new source review under this section must notify, and upon request, file a brief project summary with the permitting authority prior to beginning actual construction on the project. If the permitting authority determines that the project will have more than a de minimis impact on air quality, the permitting authority may require the filing of a notice of construction application. The permitting authority may require the owner or operator to demonstrate that the emissions increase from the new or modified emission unit is smaller than all of the levels listed below.~~

(~~c) The owner/operator may begin actual construction on the project thirty-one days after the permitting authority receives the summary, unless the permitting authority notifies the owner/operator within thirty days that the proposed new source requires a notice of construction application.~~

(~~d)~~)) Greenhouse gas emissions are exempt from new source review requirements except when the emission increase from the new or modified source is equal to or greater than 75,000 tons per year, CO_2e.

Table 110(5) Exemption levels ((~~table~~)):

POLLUTANT	LEVEL (TONS PER YEAR)
(((~~a) Total Suspended Particulates~~	~~1.25~~
~~(b) PM-10~~	~~0.75~~
~~(c) PM-2.5~~	~~0.5~~
~~(d) Sulfur Oxides~~	~~2.0~~
~~(e) Nitrogen Oxides~~	~~2.0~~
~~(f) Volatile Organic Compounds, total~~	~~2.0~~
~~(g) Carbon Monoxide~~	~~5.0~~
~~(h) Lead~~	~~0.005~~))
Carbon monoxide	5.0
Lead	0.005
Nitrogen oxides	2.0
PM-10	0.75
PM-2.5	0.5
Total suspended particulates	1.25
Sulfur dioxide	2.0
Volatile Organic Compounds, total	2.0
(((~~i~~))) Ozone Depleting Substances (in effect on July 1, 2000), total Greenhouse gases expressed as CO_2e	1.0 75,000
(((~~j~~))) Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

(6) ((~~**Application processing - completeness determination.**~~

(~~a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.~~

(~~b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).~~

(~~7~~) ~~**Final determination.**~~

(~~a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either issue a final decision on the application or for those projects subject to public notice under WAC 173-400-171(1), initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision.~~

(~~b) A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must also comply with WAC 173-400-171.~~

(~~c) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.~~

(~~d) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-112, the permitting authority must:~~

(~~i) Submit any control technology determination included in a final order of approval for a major source or a major modification to a major stationary source in a nonattainment area to the RACT/BACT/LAER clearinghouse maintained by EPA; and~~

(~~ii) Send a copy of the final approval order to EPA.~~

(~~8~~) ~~**Appeals.**~~ ~~Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. The permitting authority must promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.~~

~~(9) **Construction time limitations.** Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing that an extension is justified. The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commence construction date.~~

~~(10) **Change of conditions.**~~

~~(a) The owner or operator may request, at any time, a change in conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:~~

~~(i) The change in conditions will not cause the source to exceed an emissions standard;~~

~~(ii) No ambient air quality standard will be exceeded as a result of the change;~~

~~(iii) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;~~

~~(iv) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and~~

~~(v) The revised order meets the requirements of WAC 173-400-110, 173-400-112, 173-400-113, 173-400-720 and 173-460-040(3), as applicable.~~

~~(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.~~

~~(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a notice of construction application, that application must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC 173-455-120 applies to requests filed with ecology as notice of construction applications.~~

~~(11) **Enforcement.** All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.~~)) Portable source with notice of approval. A portable source is allowed to operate without obtaining a site-specific or a permitting authority specific approval order if the portable source complies with the provisions of WAC 173-400-036.

NEW SECTION

WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources. (1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) A complete application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3). The applicant must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be approved unless the following criteria are met:

(a) The requirements of WAC 173-400-113;

(b) The requirements of WAC 173-400-200;

(c) The requirements of WAC 173-400-800 through 173-400-860, as applicable; and

(d) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide copies of each order approving or denying a notice of construction application to the applicant and to any other party who

submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval for to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source in a nonattainment area or a major modification of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commence construction date.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the permitting authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-111, 173-400-113, 173-400-720, 173-400-830, and 173-460-040 as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) All sources regulated by ecology must file a notice of construction application when requesting a change of conditions or revisions to an order of approval.

(9) Chapter 173-455 WAC lists the fees payable to ecology for processing notice of construction applications, construction time extensions and change of conditions.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-112 ((~~Requirements for new sources in nonattainment areas.~~)) Reserved. (((~~(1) Definitions. The following definitions apply to this section:~~

~~(a) "Major modification," for the purposes of WAC 173-400-112, means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.~~

~~(i) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.~~

~~(ii) A physical change or change in the method of operation shall not include:~~

~~(A) Routine maintenance, repair and replacement;~~

~~(B) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;~~

~~(C) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act;~~

~~(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~(E) Use of an alternative fuel or raw material by a source which:~~

~~(I) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or~~

~~(II) The source is approved to use under any permit or approval order issued under WAC 173-400-112;~~

~~(iii) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.~~

~~(iv) Any change in ownership at a source.~~

~~(v) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:~~

(A) When the permitting authority has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(B) The permitting authority determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(vi) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) **"Major stationary source,"** for the purposes of WAC 173-400-112, means:

(i) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(A) 70 tons per year of PM-10 in any "serious" nonattainment area for PM-10.

(B) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary sources contribute significantly to carbon monoxide levels in the area.

(ii) Any physical change that would occur at a stationary source not qualifying under (b)(i) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(iii) A major stationary source that is major for volatile organic compounds or NOx shall be considered major for ozone.

(iv) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources or the source is a major stationary source due to (b)(i)(A) or (b)(i)(B)of this subsection:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(c) **"Net emissions increase,"** for the purposes of WAC 173-400-112, means:

(i) The amount by which the sum of the following exceeds zero:

(A) Any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(B) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(A) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(B) The permitting authority has not relied on it in issuing any permit or order of approval for the source under this section or a previous SIP approved nonattainment area new source review regulation, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(B) It is federally enforceable at and after the time that actual construction on the particular change begins;

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(D) The permitting authority has not relied on it in issuing any permit or order of approval under this section or a SIP approved nonattainment area new source review regulation; or the permitting authority has not relied on it in demonstrating attainment or reasonable further progress.

(vi) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(d) **"Significant,"** for purposes of WAC 173-400-112, means, in reference to a net emissions increase or the potential of a major stationary source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM-10:	15 tpy

(e) **"Stationary source"** and **"source"** for the purposes of WAC 173-400-112 means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant. A stationary source (or source) does not include emissions resulting directly for an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

(f) **"Building, structure facility or installation"** means for the purposes of WAC 173-400-112, all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, as amended by the 1977 supplement.

(2) The permitting authority that is reviewing an application to establish a new source in a nonattainment area shall issue the order of approval if it determines that the proposed project satisfies each of the following requirements:

(a) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(b) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

(c) The proposed new source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113(3) for all air contaminants for which the area has not been designated nonattainment.

(d) If the proposed new source is a major stationary source or the proposed modification is a major modification, the permitting authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(e) If the proposed new source or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions from the proposed new source or modification of that air contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the Federal Clean Air Act) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(i) The proposed new level of allowable emissions of the source or emissions unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders, or permits required by the Federal Clean Air Act, including the SIP, cannot be credited.

(ii) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emissions of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new source is located. For any other nonattainment area, the emissions offsets must provide a positive net air quality benefit in the nonattainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, 2004).

(iii) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(f) If the proposed new source is a major stationary source or the proposed modification is a major modification,

~~the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.~~

~~(g) If the proposed new source is a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program in WAC 173-400-720 for all air contaminants for which the area has not been designated nonattainment.~~

~~(h) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.~~

~~(i) If the proposed new source is a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is a major modification within the meaning of WAC 173-400-720, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.~~))

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. The permitting authority that is reviewing an application to establish a new source or modification in an attainment or unclassifiable area shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

(3) Allowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment ((~~nor~~)), or cause or contribute to a violation of any ambient air quality standard. ((~~This requirement will be considered to be met if the projected impact of~~))

(4)(a) The allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment:

Table 4a: Cause or Contribute Threshold Values for Nonattainment Area Impacts

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-		0.5 mg/m^3	-	2 mg/m^3
SO_2	1.0 μg/m^3	5 μg/m^3	-	25 μg/m^3	30 μg/m^3
PM_{10}	1.0 μg/m^3	5 μg/m^3	-	-	-
NO_2	1.0 μg/m^3	-	-	-	-

((~~An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.~~

~~(4) If the proposed new source is a major stationary source or the proposed modification is a major modification, it meets all applicable requirements of WAC 173-400-720 through 173-400-750.~~

~~(5)~~))) (b) A project that results in a projected impact inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction adequate to reduce the projected impacts to the above values or less. If the proposed project is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new source or modification.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, then the source must meet((~~s~~)) all applicable requirements of that program.

((~~(6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the project meets the special protection requirements for federal Class I areas of WAC 173-400-117.~~))

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) **Adoption by reference.**

(a) 40 CFR Part 60 and Appendices in effect on ((~~October 1, 2006, is~~)) July 1, 2010, are adopted by reference. Exceptions are listed in subsection (1)(b) of this section.

The following list of subparts to 40 CFR Part 60 which are shown as blank or reserved in the Code of Federal Regulations as of the date listed above, is provided for informational purposes only:

40 CFR Part 60, subparts FF, II, JJ, OO, YY, ZZ, CCC, EEE, MMM, XXX, YYY, ZZZ, GGGG, JJJJ, Appendix E, and Appendix H.

(b) Exceptions to adopting 40 CFR Part 60 by reference.

(i) The term "administrator" in 40 CFR Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 CFR Part 60 are not adopted by reference:

(A) 40 CFR 60.5 (determination of construction or modification);

(B) 40 CFR 60.6 (review of plans);

(C) 40 CFR Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, HHHH (emission guidelines); and

(D) 40 CFR Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-400-116 ((~~New source review fees.~~)) Increment protection. ((~~Fees can be found in chapter 173-455 WAC.~~)) (1) Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are given in 40 CFR 52.21(c) as published in the Federal Register as final rule on October 6, 2010.

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by the administrator of the environmental protection agency. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the administrator.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-131 Issuance of emission reduction credits. (1) **Applicability.** The owner or operator of any source may apply to the permitting authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) **Time of application.** The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting authority.

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate. The old actual emissions rate is the average emissions rate occurring during the most recent twenty-four-month period preceding the request for an ERC. An alternative twenty-four-month period from within the previous five years may be accepted by the permitting authority if the owner or operator of the source demonstrates to the satisfaction of the permitting authority that the alternative period is more representative of actual operations of the unit or source.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The reduction must be: Greater than otherwise required by an applicable emission standard or order of approval, permanent, quantifiable, and federally enforceable.

(d) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

(((~~d~~))) (e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC ((~~173-400-112 (2)(d)~~)) 173-400-113(4) or 173-400-830, nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, NESHAPS((~~, for Source Categories~~)), BACT, or LAER.

(((~~e~~))) (f) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress in an amendment to the state implementation plan.

(g) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a federally enforceable regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(((~~f~~))) (h) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an ERC application and all supporting data and documentation, the permitting authority may require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all required information has been received, the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (((~~e~~))) (h) of this section have been satisfied or not. If the application is approved, the permitting authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsection (3)(a) through (((~~e~~))) (h) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminants involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued. The emission reduction credit listed in the certificate shall be less than the amount of emission reduction achieved by the source.

(c) The certificate of emission reduction credit shall include the expiration date of the credit.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-136 Use of emission reduction credits (ERC). (1) **Permissible use.** An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120; as a part of a determination of "net emissions increase;" or as an offsetting reduction to satisfy the requirements for new source review in WAC ((~~173-400-112~~)) 173-400-830 or 173-400-113(((~~3~~))) (4) or to demonstrate a creditable emission reduction for permitting under WAC 173-400-720.

(2) **Surrender of ERC certificate.** When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the permitting authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) **Conditions of use.**

(a) An ERC may be used only for the air contaminants for which it was issued.

(b) The permitting authority may impose additional conditions of use to account for temporal and spatial differences between the emissions units that generated the ERC and the emissions units that use the ERC.

(4) **Sale of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) **Redemption period.** An unused ERC expires ((~~ten~~)) five years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard((~~, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by the permitting authority after public involvement according to WAC 173-400-171. This discount shall not exceed the percentage of additional emission reduction needed to reach attainment~~)), issued ERCs may be discounted as necessary to reach attainment.

(a) Issued ERCs may be discounted if:

(i) Reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard;

(ii) The ambient standard cannot be met through controls on operating sources; and

(iii) The plan must be revised.

(b) The discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

(c) ERCs may be discounted by the permitting authority only after notice to the public according to WAC 173-400-171 and the owners of affected ERCs.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-171 Public ((~~involvement~~)) notice. The purpose of this section is to specify the requirements for notifying the public about air quality permit actions and to provide opportunities for the public to participate in those permit actions.

(1) **Prevention of significant deterioration, and relocation of portable sources.**

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-720. Compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet ((~~notification~~)) notice of ((~~receipt of an~~)) application.**

(a) For those applications and actions not subject to a mandatory public ((~~notice and~~)) comment period per subsection (((~~(2)(a)~~))) (3) of this section, the permitting authority ((~~will either:~~

~~(i) Post on the permitting authority's internet web site~~)) must post an announcement of the receipt of notice of construction applications and other proposed actions((~~; or~~

~~(ii) Follow the public involvement process found in subsection (3) of this section~~)) on the permitting authority's internet web site.

(b) ((~~For~~)) The internet ((~~notification, notice shall~~)) posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting ((~~shall~~)) must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(((~~(c)~~))) (d) Requests for a public comment period ((~~shall~~)) must be submitted to the permitting authority in writing via letter, fax, or electronic mail ((~~within fifteen days of its~~)) during the fifteen-day internet posting period.

(e) A public ((~~notice and~~)) comment period ((~~shall~~)) must be provided ((~~pursuant to subsections (3) and (4) of this section~~)) for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day comment period.

(((~~(d) Any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section or for which the agency proposes to have a public comment period does not have to be announced on the permitting authorities' internet web site.~~

~~(2) **Actions**~~)) (3) **Actions subject to a mandatory public ((~~notice and~~)) comment period.**

(((~~(a) The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:~~

~~(i)~~))) A public comment period is mandatory for the following applications, orders, and actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for ((~~any~~)) a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact levels as regulated under chapter 173-460 WAC ((~~which will increase above the small quantity emission rate listed in WAC 173-460-080 (2)(c) would result~~)); or

(((~~(ii)~~))) (c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on ((~~October 1, 2006~~)) July 1, 2010) as part of review under WAC 173-400-110, ((~~173-400-112,~~)) 173-400-113, 173-400-117((~~, or 173-400-720~~)); or

(((~~(iii)~~))) (d) Any order to determine reasonably available control technology, RACT; or

(((~~(iv)~~))) (e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(((~~(v)~~))) (f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(((~~(vi)~~))) (g) An order to authorize a bubble; or

(((~~(vii)~~))) (h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136(6); or

(((~~(viii)~~))) (i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(((~~(ix)~~))) (j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or

(((~~(x) An~~))) (k) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

(((~~(xi)~~))) (l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(((~~(xii) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or~~

~~(xiii) Exception. PSD actions, under WAC 173-400-730 and 173-400-740 are not required to follow the procedures in this section. The public involvement for these projects shall follow the procedures in WAC 173-400-730(4) and 173-400-740.~~

~~(b) Ecology must provide notice on the following ecology only actions:~~

~~(i) A Washington state recommendation that will be submitted by the director of ecology to EPA for approval of a SIP revision, including plans for attainment, maintenance, and visibility protection; or~~

~~(ii) A Washington state recommendation to EPA for designation or redesignation of an area as attainment, nonattainment, or unclassifiable; or~~

~~(iii) A Washington state recommendation to EPA for a change of boundaries of an attainment or nonattainment area; or~~

~~(iv) A Washington state recommendation to EPA for redesignation of an area under WAC 173-400-118.~~

~~(c) The permitting authority will provide public notice before approving or denying any application or other action for which the permitting authority determines there is substantial public interest.~~

~~(d) A notice of construction application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines. A project designated for integrated review that includes a notice of construction application for a major modification in a nonat-~~

~~tainment area, or a notice of construction application for a major stationary source in a nonattainment area must also comply with public notice requirements in this section. A project designated for integrated review that includes a PSD permit application must also comply with the requirements in WAC 173-400-730 and 173-400-740.~~

~~(3) **Public notice.**~~)) (m) Any application or other action for which the permitting authority determines that there is substantial public interest.

(4) **Advertising the mandatory public comment period.** Public notice of all applications, orders, or actions listed in subsection (3) of this section must be published in a newspaper of general circulation in the area where the source or sources are or will be located. This public notice ((~~shall~~)) can be ((~~made~~)) published only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made. The notice must be published before any of the applications or other actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice. ((~~Public notice shall include:~~

~~(a) Availability for public inspection.~~))

(5) **Information available for public review.** The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(((~~(i) For a redesignation of a class II area under WAC 173-400-118, ecology must make available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation.~~

~~(ii) For a revision of the SIP subject to subsection (2)(b)(iii) of this section, ecology must make available for public inspection the information related to the action at least thirty days before the hearing.~~

~~(b) Newspaper publication. Public notice of the proposed project must be published in a newspaper of general circulation in the area of the proposed project and must include:~~)) (6) **Published notice components.**

(a) The notice must include:

(i) The name and address of the owner or operator and the facility;

(ii) A brief description of the proposal, the type of facility, including a description of the facility's processes subject to the permit;

(iii) A description of the air contaminant emissions including the type of pollutants and quantity of emissions;

(iv) The location ((~~of the~~)) where those documents made available for public inspection may be reviewed;

(((~~(iv)~~))) (v) A thirty-day period for submitting written comment to the permitting authority;

(((~~(v)~~))) (vi) A statement that a public hearing ((~~may~~)) will be held if the permitting authority determines ((~~within a thirty-day period~~)) that there is significant public interest ((~~exists or~~));

(vii) The time, date and location of the public hearing for those ecology only actions listed in ((~~WAC 173-400-171(5)(b) with a mandatory public hearing requirement, the time, date, and location of the public hearing.~~

~~(vi) The length of the public comment period in the event of a public hearing~~)) WAC 173-400-171(12);

(((~~(vii)~~))) (viii) The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas ((~~in WAC 173-400-117(5)(c)~~)), public notice ((~~shall either explain~~)) must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval; and

(((~~(viii)~~))) (c) For a redesignation of an area under WAC 173-400-118, ((~~public~~)) the notice ((~~shall~~)) must state that an explanation of the reasons for the proposed redesignation is available for review at the public location.

(((~~(c) Notifying EPA. A copy of the public notice will be sent to the EPA Region 10 regional administrator.~~

~~(d) Additional public notice requirements for a SIP revision. For a revision to the SIP that is submitted by the director of ecology, ecology must publish the public notice required by subsection (3)(b) of this section in the *Washington State Register* in advance of the date of the public hearing.~~

~~(4)~~)) (7) **Length of the public comment period.**

(a) The public comment period must be at least ((~~the thirty-day period for written comment specified in the public notice~~)) thirty days long.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The ((~~permitting authority shall make no~~)) final decision ((~~on any application or action of any type described in subsection (1) of this section~~)) cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(((~~(5) **Public hearings.**~~

~~(a)~~)) (8) **Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, fax, or electronic mail. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) **Setting the hearing date and providing hearing notice.** If the permitting authority ((~~may hold a public hearing if it~~)) determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(((~~(b)~~))) (10) **Notice of public hearing.**

(a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:

(i) Publish the notice of public hearing in a newspaper of general circulation in the area where the source or sources are or will be located; and

(ii) Mail the notice of public hearing to the applicant and to any person who submitted written comments on the application or requested a public hearing.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) The applicant must pay all publishing costs associated with meeting the requirements of this subsection.

(11) **Notifying the EPA.** The permitting authority must send a copy of the notice for all actions subject to the mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) Ecology must ((~~hold a hearing~~)) comply with the requirements of 40 CFR 51.102, in effect on July 1, 2010, on the following ecology only actions:

(i) A Washington state recommendation to EPA that will be submitted by the director of ecology for approval of a SIP revision including plans for attainment, maintenance, and visibility protection;

(ii) A Washington state recommendation to EPA for designation, redesignation, or a change of boundaries of an attainment area, or nonattainment area, or an unclassifiable area;

(iii) ((~~A Washington state recommendation to EPA for designation of an area as attainment, nonattainment, or unclassifiable; and~~

~~(iv)~~)) A Washington state recommendation to EPA to redesignate ((~~an area~~)) Class I, II, or III areas under WAC 173-400-118.

(((~~(c) Ecology must provide at least thirty days prior notice of a hearing required under subsection (4)(b) of this section.~~

~~(6)~~)) (b) The notice must comply with subsection (10) of this section.

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-560 General order of approval. In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may apply for coverage under a general order of approval issued under this section. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including nonroad engines as defined in section 216 of the Federal Clean Air Act, subject to the conditions in this section. A general order of approval shall identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered emission unit or source. At a minimum, these terms and conditions shall include:

(a) Applicable emissions limitations and/or control requirements;

(b) Best available control technology;

(c) Appropriate operational restrictions, such as:

(i) Criteria related to the physical size of the unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria determined by a permitting authority;

(d) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;

(e) Appropriate initial and periodic emission testing requirements;

(f) Compliance with chapter 173-460 WAC, and WAC ((~~173-400-112 (2)(c)~~)) 173-400-830 or 173-400-113(3) as applicable;

(g) Compliance with 40 CFR Parts 60, 61, 62, and 63; and

(h) The application and approval process to obtain coverage under the specific general order of approval.

(2) **Public comment.** ((~~A permitting authority shall provide an opportunity for public comment on~~)) Compliance with WAC 173-400-171 is required for a proposed new general order of approval or modification of an existing general order of approval ((~~in accordance with WAC 173-400-171~~)).

(3) **Modification of general orders of approval.** A permitting authority may review and modify a general order of approval at any time. Only the permitting authority that issued a general order of approval may modify that general order of approval. Modifications to general orders of approval shall follow the procedures of this regulation and shall only take effect prospectively.

(4) **Application for coverage under a general order of approval.**

(a) In lieu of applying for an individual order of approval under WAC 173-400-110, an owner or operator of an emission unit or source may apply for and receive coverage from a permitting authority under a general order of approval if:

(i) The owner or operator of the emission unit or source applies for coverage under a general order of approval in accordance with this regulation and any conditions of the approval related to application for and granting coverage under the general order of approval;

(ii) The emission unit or source meets all the qualifications listed in the requested general order of approval;

(iii) The requested emission unit or source is not part of a new major stationary source or major modification subject to the requirements of WAC ((~~173-400-112~~)) 173-400-830 or 173-400-720; and

(iv) The requested emission unit or source does not trigger applicability of the operating permit program under chapter 173-401 WAC or trigger a required modification of an existing operating permit.

(b) Owners or operators of emission units or sources applying for coverage under a general order of approval shall do so using the forms supplied by a permitting authority and include the required fee. The application must include all information necessary to determine qualification for, and to assure compliance with, a general order of approval.

(c) An application shall be incomplete until a permitting authority has received any required fees.

(d) The owner or operator of a new source or modification of an existing source that qualifies for coverage under a general order of approval may not begin actual construction of the new source or modification until its application for coverage has been approved or accepted under the procedures established in subsection (5) of this section.

(5) **Processing applications for coverage under a general order of approval.** Each general order of approval shall include a section on how an applicant is to request coverage and how the permitting authority will grant coverage. The section of the general order of approval will include either the method in (a) or (b) of this subsection to describe the process for the applicant to be granted coverage.

(a) Within thirty days of receipt of an application for coverage under a general order of approval, the permitting authority shall notify an applicant in writing that the application is incomplete, approved, or denied. If an application is incomplete, the permitting authority shall notify an applicant of the information needed to complete the application. If an application is denied, the permitting authority shall notify an applicant of the reasons why the application is denied. Coverage under a general order of approval is effective as of the date of issuance of approval by the permitting authority.

(b) The applicant is approved for coverage under the general order of approval thirty-one days after an application for coverage is received by the permitting authority, unless the owner or operator receives a letter from the permitting authority, postmarked within thirty days of when the application for coverage was received by the permitting authority, notifying the owner or operator that the emissions unit or source does not qualify for coverage under the general order of approval. The letter denying coverage shall notify the applicant of the disqualification and the reasons why coverage is denied.

(6) **Termination of coverage under a general order of approval.** An owner or operator who has received approval of an application for coverage under a general order of approval may later request to be excluded from coverage under that general order of approval by applying to the same permitting authority for an individual order of approval, under WAC 173-400-110, or for coverage under another general order of approval. If the same permitting authority issues an individual order of approval or other permit or order serving the same purpose as the original general order of approval, or approves coverage under a different general order of approval, coverage under the original general order of approval is automatically terminated, effective on the effective date of the individual order of approval, order or permit or new general order of approval.

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement action for establishment of a new source in violation of WAC 173-400-110 a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-700 Review of major stationary sources of air pollution. (1) The following sections are to be used by ecology when reviewing and permitting new major stationary sources and major modifications to major stationary sources located in attainment or unclassified areas in Washington.

(2) WAC 173-400-700 through 173-400-750 apply statewide except:

(a) Where the authority has received delegation of the federal PSD program from EPA or has a SIP approved PSD program.

(b) To projects under the jurisdiction of the energy facility site evaluation council site certification process pursuant to chapter 80.50 RCW.

((~~(c) Applications or requests to designate an emissions unit as a Clean Unit under 40 CFR 52.21(y), to permit a Pollution Control Project under 40 CFR 52.21 (z)(5), or to establish an actual Plantwide Applicability Limit under 40 CFR 52.21(aa) shall be processed by the authority where the authority has received delegation from EPA to administer the relevant alternative PSD applicability tests.~~))

(3) The construction of a major stationary source or major modification subject to the permitting requirements of the following section might also be subject to the permitting programs in WAC 173-400-110 and 173-400-800 through 173-400-860.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply ((~~shall~~)) can begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, ((~~shall~~)) will:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) ((~~Allowable emissions from the proposed major stationary source or major modification will not delay the attainment date for an area not in attainment nor cause or contrib-~~

~~ute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed major stationary source or the projected impact of the increase in allowable emissions from the proposed major modification at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment:~~

~~Pollutant~~	~~Annual Average~~	~~24-Hour Average~~	~~8-Hour Average~~	~~3-Hour Average~~	~~1-Hour Average~~
~~CO~~	~~-~~		~~0.5 mg/m^3~~	~~-~~	~~2 mg/m^3~~
~~SO_2~~	~~1.0 µg/m^3~~	~~5 µg/m^3~~	~~-~~	~~25 µg/m^3~~	~~30 µg/m^3~~
~~PM_{10}~~	~~1.0 µg/m^3~~	~~5 µg/m^3~~	~~-~~	~~-~~	~~-~~
~~NO_2~~	~~1.0 µg/m^3~~	~~-~~	~~-~~	~~-~~	~~-~~

~~An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.~~)) WAC 173-400-113 (1), (3), and (4).

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-730 - Prevention of significant deterioration application processing;

(iv) WAC 173-400-740 - Prevention of significant deterioration public involvement requirements;

(v) WAC 173-400-116 - Increment protection; and

((~~(v)~~)) (vi) The following subparts of 40 CFR 52.21, in effect on October ((~~1, 2006~~)) 6, 2010, which are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

Section	Title
40 CFR 52.21 (a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions.
40 CFR 52.21 (c)	Ambient air increments.
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.
40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
40 CFR 52.21 (r)	Source obligation.
40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
((~~40 CFR 52.21 (x)~~	~~Vacated by federal Court Decision.~~
~~40 CFR 52.21 (y)~~	~~Vacated by federal Court Decision.~~
~~40 CFR 52.21 (z)~~	~~Vacated by federal Court Decision.~~))
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.
((~~40 CFR 52.21 (bb)~~	~~Severability clause.~~
~~40 CFR 52.21 (cc)~~	~~Vacated by federal Court Decision.~~))

Sections not listed above are adopted elsewhere in this rule, reserved, stayed, not part of the 40 CFR 51.166 requirements, or are not delegable.

(b) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (o) of this section, paragraph (r) of this section, WAC 173-400-117, 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21 (r)(6) "The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects ((~~at a Clean Unit or~~)) at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 40 CFR 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21 (b)(41)(ii)(c)

and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 CFR 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 CFR 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report ((~~shall~~)) will be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

(D) 40 CFR 52.21 (r)(7) The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).

(E) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source.

(F) 40 CFR 52.21 (aa)(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740.

(G) 40 CFR 52.21 (aa)(9)(i)(b) Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate.

(H) 40 CFR 52.21 (aa)(14) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii).

(I) 40 CFR 52.21 (aa)(14)(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3).

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) **Application submittal.**

(a) The applicant shall submit an application that provides complete information adequate for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for ((~~requests for a Clean Unit designation under 40 CFR 52.21(y), a pollution control project exemption under 40 CFR 52.21(z) or~~)) the initial request, renewal or expiration of a PAL under 40 CFR 52.21(aa) shall be done as provided in WAC 173-400-720 (4)(b)(iii).

(2) **Application processing.**

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) Within one year after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) As expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) The effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-750 Revisions to PSD permits. (1) The owner or operator may request, at any time, a change in conditions of a PSD permit and ecology may approve the request provided ecology finds that:

(a) The change in conditions will not cause the source to exceed an emissions standard established by regulation;

(b) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

(c) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(d) The revised PSD permit will continue to require BACT, as defined at the time of the original PSD permit, for each new or modified emission unit approved by the original PSD permit; and

(e) The revised PSD permit continues to meet the requirements of WAC 173-400-112(2), and 173-400-113, as applicable.

(2) A request to revise a PSD permit must be acted upon using the timelines found in WAC 173-400-730. The fee schedule found in chapter 173-455 WAC ((~~173-400-116 shall~~)) also ((~~apply~~)) applies.

(3) All revisions to PSD permits are subject to public involvement except for the following administrative revisions:

(a) Change of the owner or operator's business name and/or mailing address;

(b) Corrections to typographical errors;

(c) Revisions to compliance monitoring methods that do not reduce the permittee's or ecology's ability to determine compliance with the emission limitations; or

(d) Any other revision that does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.

NEW SECTION

WAC 173-400-800 Major stationary source and major modification in a nonattainment area. WAC 173-400-800 through 173-400-860 apply statewide except where a permitting authority has a permitting program for major sources in a nonattainment area incorporated into the Washington state implementation plan as replacement for these sections.

These requirements apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

NEW SECTION

WAC 173-400-810 Major stationary source and major modification definitions. The definitions in WAC 173-400-030 are to be used in WAC 173-400-800 through 173-400-860 unless a term is defined differently in this section for use in the major source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860 or a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in WAC 173-400-850.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, for purposes of a PAL, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed

source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by the administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel located at the new or modified stationary source unless performing stationary source functions. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection,

installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary

source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(8)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14)(a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185b, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185b of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes in (e) of this subsection whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the act.

(15)(a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR part 51, Appendix S adopted by reference in WAC 173-400-850 shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185b, part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185b, part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

(17)(a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(ii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(f) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(g) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165 or Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23)(a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24)(a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent

or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming EPA rulemaking codifying emission test methods for condensable particulate matter), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 and PM-10 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 and PM-10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of this section.

(25)(a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Lead	0.6 tons per year
PM-10	15 tons per year
PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185b, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary

sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a)(i), (ii), and (v) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a)(i) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a)(i) and (ii) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185b of the Federal Clean Air Act shall be considered a significant net emissions increase.

(27) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(28) Source means "stationary source" as defined in WAC 173-400-030.

(29) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

NEW SECTION

WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements. (1) Any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area shall use the following procedures to determine if the new stationary source or modification is subject to the permitting requirements of WAC 173-400-830 through 173-400-850.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in WAC 173-400-850.

(5) **Reasonable possibility:** Except as provided in (f) of this subsection, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of (f) of this subsection, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection (c), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) The owner or operator shall submit a report to the permitting authority within sixty days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within sixty days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(f) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (f)(ii) of this subsection, and not also within the meaning of (f)(i) of this subsection, then (c) through (f) of this subsection does not apply to the project.

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in chapter 173-401 WAC.

NEW SECTION

WAC 173-400-830 Permitting requirements. (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, may be permitted to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The proposed new major stationary source or a major modification of an existing major stationary source and the permitting authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source will comply with all applicable new source performance standards, National Emission Standards for Hazardous Air Pollutants,

National Emission Standards for Hazardous Air Pollutants for source categories, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants, except that it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source or major modification to an existing major stationary source is major.

(e) Allowable emissions from the proposed new source or modification of that air contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(f) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program in WAC 173-400-720 for all air contaminants for which the area has not been designated nonattainment.

(h) If the proposed new source is a major stationary source within the meaning of WAC 173-400-810, or the proposed modification is a major modification within the meaning of WAC 173-400-810, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where the administrator of the environmental protection agency has granted a NO_X waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

NEW SECTION

WAC 173-400-840 Emission offset requirements. (1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(a) In any marginal nonattainment area for ozone - 1.1:1;

(b) In any moderate nonattainment area for ozone - 1.15:1;

(c) In any serious nonattainment area for ozone - 1.2:1;

(d) In any severe nonattainment area for ozone - 1.3:1; and

(e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185b of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185b of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185b of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) The requirements of this section applicable to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(6) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(7) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(8) Emission offsets not included in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except

that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or curtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (b)(iii)(A)(I) of this subsection.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

NEW SECTION

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of July 1, 2010, is adopted by reference with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 CFR 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

NEW SECTION

WAC 173-400-860 Public involvement procedures. The public involvement procedures in WAC 173-400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued under this section must comply with WAC 173-400-171.

NEW SECTION

WAC 173-400-930 Emergency engines. (1) **Applicability.**

(a) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(b) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(c) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

(d) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines, contained in 40 CFR Parts 89 and 1039, as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance and testing.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Provide electric power for the facility when the electric utility provider takes its power distribution equipment offline to service that equipment for any reason that does not qualify as an emergency use; or

(iv) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance.

WSR 10-20-153
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed October 6, 2010, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-017.

Title of Rule and Other Identifying Information: Minor revisions to chapter 468-400 WAC, Bicycle racing.

Hearing Location(s): 310 Maple Park Avenue, Transportation Commission Board Room, Room 1D2, Olympia, WA 98504, on November 10, 2010, at 10:30 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Cathy Cooper, P.O. Box 47344, Olympia, WA 98504-7344, e-mail cooperc@wsdot.wa.gov, fax (360) 705-6826, by November 8, 2010.

Assistance for Persons with Disabilities: Contact department of transportation by November 8, 2010, (360) 705-7000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is editorial, for updating and clarification purposes only, and is not intended to affect or alter current practice or procedure.

Reasons Supporting Proposal: The proposal updates terms and phrases to accurately reflect current national practices associated with traffic control for bicycle races utilizing state highways.

Statutory Authority for Adoption: RCW 47.36.030.

Statute Being Implemented: None.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Under WAC 468-400-040(7), the event liability insurance threshold is raised from one million dollars to two million dollars to reflect accepted current practice for special events utilizing state highways.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cathy Cooper, Olympia, Washington, (360) 705-7411.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is exempt from the small business economic impact statement process under RCW 19.85.025(3) and 34.05.310 (4)(c) and (d). There is no economic impact to small business because bicycle racing is a voluntary recreational activity.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is exempt under RCW 34.05.328 (5)(b)(iii) and (iv). The rule does not change federal regulations or Washington state law. The rule updates and clarifies terms and phrases to accurately reflect current national practices associated with traffic control for bicycle races utilizing state highways.

October 6, 2010
Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-010 Policy. It is the policy of the Washington state department of transportation (department) to permit bicycle racing on state highways in accordance with the conditions and regulations set forth in this ((~~code~~)) chapter and the latest edition of the "*Washington State Bicycle Racing Guidelines.*"

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-020 Definitions. Bicycles are defined in RCW ((~~47.04.071 [46.04.071]~~)) 46.04.071. Bicycle racing means any contest of speed or competition ((~~where~~)) conducted on bicycles ((~~are used~~)). Bicycle racing permits riding with more than two riders abreast on a roadway. This ((~~code~~)) chapter applies to all bicycle racing events ((~~in which bicycle racing takes place~~)) conducted on state highways, including the following types.

(1) Duathlon, triathlon, or multisport event. ((~~A~~)) Duathlons, triathlons, or multisport ((~~race~~)) events are competitions in which bicycle racing forms an essential component ((~~of the complete event~~)). The bicycle race portion of these events is conducted similar to a time trial.

(2) Time trial. Time trials are events in which individuals or small teams of riders, separately ride the same route and distance for elapsed time. Time trials are generally started at preset intervals and held on an out-and-back or circuit course.

(3) Criterium. Criteriums are massed start, high speed bicycle race events in which riders race around a closed circuit course to compete for order of finish. Criteriums are usually held on closed urban or suburban public streets. The course is normally one-half to one mile ((~~in length~~)) long.

(4) Road race. Road races are massed start events in which riders complete a race course for order of finish. The course may be point-to-point, a large circuit, or repeated laps of a shorter circuit. Road races are usually held on rural or suburban roads, but may also ((~~take place on~~)) utilize urban streets.

(5) Rolling enclosure. A rolling enclosure is a type of traffic control where escort vehicles form ((~~a~~)) an enclosed caravan for the exclusive use of bicyclists, by leading and following a group of racers. The enclosure ((~~sets aside a moving part of~~)) moves along the roadway in the direction of the race ((~~for exclusive use of bicyclists~~)). Racers inside the enclosure are not required to follow the normal rules of the road but are controlled by the rules set forth in the "*Washington State Bicycle Racing Guidelines*." Racers are not allowed to cross the ((~~center line~~)) roadway centerline unless the entire road is traffic controlled. A rolling enclosure is the typical traffic control ((~~used to run~~)) strategy for a road race.

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-030 Bicycle race permit required. No bicycle race event may be held on a state highway without an approved bicycle race permit. All persons or organizations (permittee) conducting any form of bicycle race on a state highway shall apply for a bicycle race permit from the applicable ((~~WSDOT~~)) department region administrator. The bicycle race permit must be applied for at least sixty days before the bicycle race event. ((~~No bicycle race event may be held on a state highway without an approved bicycle race permit.~~)) The ((~~WSDOT~~)) department region administrator may waive these requirements under special conditions.

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-040 Bicycle race permit conditions. (1) Bicycle race permits shall be granted only under conditions that ensure reasonable safety for ((~~all~~)) participants, spectators, and other highway users. Reasonable safety implies that race participants, spectators, and other highway users have been accommodated ((~~in~~)) during the planning process in a manner ((~~as to~~)) that minimizes the possibility of placing one highway user in conflict with another.

(2) Bicycle race permit requests must include a race description stating all the pertinent information required to understanding the bicycle race event. The request must include a map showing the roadway on which the race will be held. Applications must specify the number of escort vehicles on the roadway used to ((~~run a~~)) conduct the race, starting and anticipated ((~~finish~~)) finishing time, maximum number of racers, number and training of course marshals, types of signing, and communications equipment.

(3) Approval of other involved jurisdictions shall be obtained prior to formal issuance of a bicycle race permit from the ((~~WSDOT~~)) department.

(4) If the race only crosses a state highway, the ((~~WSDOT~~)) department region administrator may waive the need for a bicycle race permit provided the permittee can show that reasonable traffic control and safety are provided by the organizer and other road authority: Provided further, That the permittee provide the indemnification and liability insurance prescribed in subsections (6) and (7) of this section.

(5) Bicycle racing will not normally be allowed on the Interstate Highway System.

(6) The permittee shall indemnify, defend and save harmless the state of Washington for any claim, suit, action for injuries, death or any other cause of personal injury or property damage arising from the issuance of a bicycle race permit, including claims of race participants, pedestrians, or other roadway users.

(7) The permittee shall obtain liability insurance in an amount no less than ((~~one~~)) two million dollars to cover the state of Washington for any and all liabilities, including all costs, attorney fees, judgments or other expenses, arising ((~~out of~~)) from the use of state highways for the bicycle race event. The state shall be named as an additional insured on all insurance policies. When motor vehicles participate during the event, liability insurance for those vehicles is also required.

(8) When five or more vehicles are lined up behind a bicycle race and delayed for more than five minutes, the bicycle race shall be neutralized at a place of safety to allow the delayed vehicles to pass.

(9) Requests for bicycle race permits must comply with the ((~~current WSDOT~~)) latest edition of the department's "*Washington State Bicycle Racing Guidelines.*"

(10) The original or certified copy of the permit must be available at the bicycle race for the duration of the bicycle race event.

((~~Copies of~~)) The "*Washington State Bicycle Racing Guidelines*" may be obtained from the ((~~WSDOT bicycle and pedestrian program or a WSDOT region office~~)) department's web site.

WSR 10-20-155
PROPOSED RULES
STATE BOARD OF HEALTH
[Filed October 6, 2010, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-008.

Title of Rule and Other Identifying Information: Chapter 246-101 WAC, relating to reporting of communicable diseases and animal bites, excluding WAC 246-101-520 Special conditions—AIDS and HIV and 246-101-635 Special conditions—AIDS and HIV.

Hearing Location(s): State Board of Health Meeting, Shoreline Conference Center, 18560 1st Avenue N.E., Shoreline, WA 98155, on November 10, 2010, at 1:15 p.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Tracy Sandifer, Communicable Disease Epidemiology, Washington State Department of Health, 1610 N.E. 150th Street, Mailstop K17-9, Shoreline, WA 98155, web site http://www3.doh.wa.gov/policyreview/, fax (206) 418-5558, by November 4, 2010.

Assistance for Persons with Disabilities: Contact Tracy Sandifer by November 1, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule revision proposal is intended to add newly identified conditions and remove no longer relevant conditions from the notification lists; clarify laboratory reporting requirements; incorporate references to new technologies; make laboratory, health care provider, and health care facilities notifiable conditions lists consistent; and clarify unclear language. The proposed rule revisions pertain only to reporting of communicable diseases.

Reasons Supporting Proposal: Since the rule was last revised on January 11, 2005, there have been a number of changes and developments in notifiable conditions reporting that should be addressed including: Identification of new conditions, national or international requirements, new laboratory methods, and improvements in reporting technologies. There is also a need to address current rule language that is unclear or incomplete. In addition, an emergency rule adopted on June 11, 2009, for the provisional reporting of novel influenza A (H1N1) for hospitalized patients or death needs to be reviewed for permanent notification.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 43.20.050.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Sandifer, DOH, 1610 N.E. 150th Street, Shoreline, (206) 418-5558 and Tara Wolff, SBOH, 101 Israel Road S.E., Tumwater, (360) 236-4101; Implementation and Enforcement: Judith May, 1610 N.E. 150th Street, Shoreline, WA, (206) 418-5500.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tracy Sandifer, Communicable Disease Epidemiology, Washington State Department of Health, 1610 N.E. 150th Street, Mailstop K17-9, Shoreline, WA 98155, phone (206) 418-5558, fax (206) 418-5515, e-mail tracy.sandifer@doh.wa.gov.

October 6, 2010
Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-010 Definitions within the notifiable conditions regulations. The following definitions apply in the interpretation and enforcement of this chapter:

(1) "Associated death" means a death resulting directly or indirectly from the confirmed condition of influenza or varicella. There should be no period of complete recovery between the illness and death.

(2) "Blood lead level" means a measurement of lead content in whole blood.

(((~~(2)~~))) (3) "Board" means the Washington state board of health.

(((~~(3)~~))) (4) "Carrier" means a person harboring a specific infectious agent and serving as a potential source of infection to others.

(((~~(4)~~))) (5) "Case" means a person, alive or dead, diagnosed with a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

(((~~(5)~~))) (6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(((~~(6)~~))) (7) "Condition notifiable within three ((~~work~~)) business days" means a notifiable condition that must be reported to the local health officer or the department within three ((~~working~~)) business days following date of diagnosis. For example, if a condition notifiable within three ((~~work~~)) business days is diagnosed on a Friday afternoon, the report must be submitted by the following Wednesday.

(((~~(7)~~))) (8) "Communicable disease" means a disease caused by an infectious agent ((~~which~~)) that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission ((~~via~~)) through an intermediate host or vector, food, water, or air.

(((~~(8) "Communicable disease cluster" means two or more cases of a confirmed or suspected communicable disease with a suspected common source diagnosed or exposed within a twenty-four hour period.~~)))

(9) "Contact" means a person exposed to an infected person, animal, or contaminated environment that may lead to infection.

(10) "Department" means the Washington state department of health.

(11) "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in

humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms. The following situations could represent a possible bioterrorism event and should be reported immediately to the local health department:

(a) A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;

(b) A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or

(c) Unexplained increase in a common syndrome above seasonally expected levels.

(12) "Elevated blood lead level" means blood lead levels equal to or greater than 25 micrograms per deciliter for persons aged fifteen years or older, or equal to or greater than 10 micrograms per deciliter in children less than fifteen years of age.

(13) "Emerging condition with outbreak potential" means a newly identified condition with potential for person-to-person transmission.

(14) "Food service establishment" means a place, location, operation, site, or facility where food is manufactured, prepared, processed, packaged, dispensed, distributed, sold, served, or offered to the consumer regardless of whether or not compensation for food occurs.

(((~~(14)~~))) (15) "Health care-associated infection" means an infection acquired in a health care facility.

(16) "Health care facility" means:

(a) Any ((~~facility or institution~~)) boarding home licensed under chapter 18.20 RCW((~~, Boarding homes~~)); birthing center licensed under chapter 18.46 RCW((~~, Birthing centers~~)); nursing home licensed under chapter 18.51 RCW((~~, Nursing homes~~)); hospital licensed under chapter 70.41 RCW((~~, Hospitals~~)); adult family home licensed under chapter 70.128 RCW((~~, Adult family homes~~)); ambulatory surgical facility licensed under chapter 70.230 RCW; or private establishment licensed under chapter 71.12 RCW((~~, Private establishments~~));

(b) Clinics, or other settings where one or more health care providers practice; and

(c) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

(((~~(15)~~))) (17) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Military personnel providing health care within the state regardless of licensure.

(((~~(16)~~))) (18) "Health care services to the patient" means treatment, consultation, or intervention for patient care.

(((~~(17)~~))) (19) "Health carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(((~~(18)~~))) (20) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including, but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting the existence.

(((~~(19)~~))) (21) "Immediately notifiable condition" means a notifiable condition of urgent public health importance, a case or suspected case of which must be reported to the local health officer or the department ((~~immediately~~)) without delay at the time of diagnosis or suspected diagnosis, twenty-four hours a day, seven days a week.

(((~~(20)~~))) (22) "Infection control measures" means the management of infected persons, or of a person suspected to be infected, and others in a manner to prevent transmission of the infectious agent.

(((~~(21)~~))) (23) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects as defined in RCW 70.02.010.

(((~~(22)~~))) (24) "Isolation" means the separation or restriction of activities of infected individuals, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent.

(((~~(23)~~))) (25) "Laboratory" means any facility licensed as a medical test site under chapter 70.42 RCW.

(((~~(24)~~))) (26) "Laboratory director" means the director or manager, by whatever title known, having the administrative responsibility in any licensed medical test site.

(((~~(25)~~))) (27) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, established under chapters 70.05, 70.08, and 70.46 RCW.

(((~~(26)~~))) (28) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department.

(((~~(27)~~))) (29) "Member of the general public" means any person present within the boundary of the state of Washington.

(((~~(28)~~))) (30) "Monthly notifiable condition" means a notifiable condition which must be reported to the local health officer or the department within one month of diagnosis.

(((~~(29) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.~~

~~(30)~~))) (31) "Notifiable condition" means a disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer or the state health officer.

(((~~(31)~~))) (32) "Other rare diseases of public health significance" means a disease or condition, of general or international public health concern, which is occasionally or not ordinarily seen in the state of Washington including, but not limited to, ((~~viral hemorrhagic fevers, Rocky Mountain~~)) spotted fever((~~,~~)) rickettsioses, babesiosis, tick paralysis, anaplasmosis, and other tick borne diseases. This also includes ((~~a~~)) public health events of international concern and communicable diseases that would be of general public concern if detected in Washington.

(((~~(32)~~))) (33) "Outbreak" means the occurrence of cases or suspected cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(((~~(33)~~))) (34) "Patient" means a case, suspected case, or contact.

(((~~(34)~~))) (35) "Pesticide poisoning" means the disturbance of function, damage to structure, or illness in humans resulting from the inhalation, absorption, ingestion of, or contact with any pesticide.

(((~~(35)~~))) (36) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis or treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(((~~(36)~~))) (37) "Public health authorities" means local health departments, the state health department, and the department of labor and industries personnel charged with administering provisions of this chapter.

(((~~(37)~~))) (38) "Quarantine" means the separation or restriction on activities of an individual having been exposed to or infected with an infectious agent, to prevent disease transmission.

(((~~(38)~~))) (39) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade twelve).

(((~~(39)~~))) (40) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

(a) Acute pelvic inflammatory disease;

(b) Chancroid;

(c) *Chlamydia trachomatis* infection;

(d) Genital and neonatal Herpes simplex;

(e) Genital human papilloma virus infection;

(f) Gonorrhea;

(g) Granuloma inguinale;

(h) Hepatitis B infection;

(i) Human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrome (AIDS);

(j) Lymphogranuloma venereum;

(k) Nongonococcal urethritis (NGU); and

(l) Syphilis.

(((~~(40)~~))) (41) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of this designation, the person having primary responsibility for public health matters in the state.

(((~~(41)~~))) (42) "Suspected case" means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.

(((~~(42)~~))) (43) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction((~~,~~)) including a health care service contractor((~~,~~)) and health maintenance organization((~~, or~~)), an employee welfare benefit plan((~~,~~)), or a state or federal health benefit program as defined in RCW 70.02.010.

(((~~(43)~~))) (44) "Unexplained critical illness or death" means cases of illness or death with infectious hallmarks but no known etiology, in previously healthy persons one to forty-nine years of age excluding those with chronic medical conditions (e.g., malignancy, diabetes, AIDS, cirrhosis).

(((~~(44)~~))) (45) "Veterinarian" means an individual licensed and practicing under provisions of chapter 18.92 RCW, Veterinary medicine, surgery, and dentistry ((~~and practicing animal health care~~)).

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

WAC 246-101-015 Provisional condition notification. This section describes how conditions can become notifiable; what period of time conditions are provisionally notifiable; what analyses must be accomplished during provisional notification status; the transition ((~~of~~)) from provisionally notifiable condition((~~s~~)) to ((~~permanent notification~~)) permanently notifiable condition or deletion of notification requirements. The department's goal for provisionally notifiable conditions is to collect enough information to determine whether requiring notification improves public health.

(1) The state health officer may:

(a) Request reporting of cases and suspected cases of disease and conditions in addition to those required in Tables HC-1 of WAC 246-101-101, Lab-1 of WAC 246-101-201, and HF-1 of WAC 246-101-301 on a provisional basis for a period of time less than forty-eight months when:

(i) The disease or condition is newly recognized or recently acknowledged as a public health concern;

(ii) Epidemiological investigation based on notification of cases may contribute to understanding of the disease or condition;

(iii) There is reason to expect that the information acquired through notification will assist the state and/or local health department to design or implement intervention strategies that will result in an improvement in public health; and

(iv) Written notification is provided to all local health officers regarding:

(A) Additional reporting requirements; and

(B) Rationale or justification for specifying the disease or condition as notifiable.

(b) Request laboratories to submit specimens indicative of infections in addition to those required in Table Lab-1 of WAC 246-101-201 on a provisional basis for a period of time less than forty-eight months, if:

(i) The infection is of public health concern;

(ii) The department has a plan for using data gathered from the specimens; and

(iii) Written notification is provided to all local health officers and all laboratory directors explaining:

(A) Actions required; and

(B) Reason for the addition.

(2) Within forty months of the state health officer's designation of a condition as provisionally notifiable in subsection (1)(a) of this section, or requests for laboratories to submit specimens indicative of infections in subsection ((~~(2)~~)) (1)(b) of this section, the department will conduct an evaluation for the notification requirement that:

(a) Estimates the societal cost resulting from the provisionally notifiable condition;

(i) Determine the prevalence of the provisional notifiable condition; and

(ii) Identify the quantifiable costs resulting from the provisionally notifiable condition; and

(iii) Discuss the qualitative costs resulting from the provisionally notifiable condition.

(b) Describes how the information was used and how it will continue to be used to design and implement intervention strategies aimed at combating the provisionally notifiable condition;

(c) Verifies the effectiveness of previous intervention strategies at reducing the incidence, morbidity, or mortality of the provisional notifiable condition;

(d) Identifies the quantitative and qualitative costs of the provisional notification requirement;

(e) Compares the costs of the provisional notification requirement with the estimated cost savings resulting from the intervention based on the information provided through the provisional notification requirement;

(f) Describes the effectiveness and utility of using the notifiable conditions process as a mechanism to collect these data; and

(g) Describes that a less burdensome data collection system (example: Biennial surveys) would not provide the information needed to effectively establish and maintain the intervention strategies.

(3) Based upon the evaluation in subsection (2) of this section, the board will assess results of the evaluation after the particular condition is notifiable or the requirement for laboratories to submit specimens indicative of infections has been in place for no longer than forty months. The board will determine based upon the results of the evaluation whether the provisionally notifiable condition or the requirement for laboratories to submit specimens indicative of infections should be:

(a) Permanently notifiable in the same manner as the provisional notification requirement;

(b) Permanently notifiable in a manner that would use the evaluation results to redesign the notification requirements; or

(c) Deleted from the notifiable conditions system.

(4) The department shall have the authority to declare an emergency and institute notification requirements under the provisions of RCW 34.05.350.

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

WAC 246-101-101 Notifiable conditions and the health care provider. This section describes the conditions that Washington's health care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in ((~~the table below (~~))Table HC-1((~~)~~)) of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington.

(1) Principal health care providers shall notify public health authorities of ((~~these~~)) the conditions identified in Table HC-1 of this section as individual case reports ((~~using procedures described throughout this chapter~~)) following the requirements in WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120.

(2) Other health care providers in attendance, other than the principal health care provider, shall notify public health authorities of the ((~~following notifiable~~)) conditions((~~,~~)) identified in Table HC-1 of this section unless the condition notification has already been made.

(3) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

((~~WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120 also include requirements for how notifications shall be made, when they shall be made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.~~))

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 ((~~work~~)) business days	√	
((~~Animal Bites~~	~~Immediately~~	~~√~~))	
Anthrax	Immediately	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Arboviral Disease (acute disease only including, but not limited to, West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, and Powassan)	Within 3 ((~~work~~)) business days	√	
Asthma, occupational	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis (*Brucella* species)	((~~Immediately~~)) Within 24 hours	√	
Burkholderia mallei (Glanders) and *pseudomallei* (Melioidosis)	Immediately	√	
Campylobacteriosis	Within 3 ((~~work~~)) business days	√	
Chancroid	Within 3 ((~~work~~)) business days	√	
Chlamydia trachomatis infection	Within 3 ((~~work~~)) business days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 ((~~work~~)) business days	√	
Cyclosporiasis	Within 3 ((~~work~~)) business days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (((~~including):~~ ~~• Anthrax~~ ~~• Smallpox~~))	Immediately	√	
((~~Disease of suspected foodborne origin (communicable disease clusters only)~~	~~Immediately~~	~~√~~	
~~Disease of suspected waterborne origin (communicable disease clusters only)~~	~~Immediately~~	~~√~~	
~~Enterohemorrhagic *E. coli* (shiga-like toxin-producing infections only) such as *E. coli* O157:H7 Infection~~	~~Immediately~~	~~√~~))	
Domoic acid poisoning	Immediately	√	
E. coli – Refer to "Shiga toxin-producing *E. coli*"	Immediately	√	
Emerging condition with outbreak potential	Immediately	√	
Giardiasis	Within 3 ((~~work~~)) business days	√	
Gonorrhea	Within 3 ((~~work~~)) business days	√	
Granuloma inguinale	Within 3 ((~~work~~)) business days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Haemophilus influenzae (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within ((~~3 work days~~)) 24 hours	√	
((~~Hemolytic uremic syndrome~~	~~Immediately~~	~~√~~))	
Hepatitis A (acute infection)	((~~Immediately~~)) Within 24 hours	√	
Hepatitis B (acute infection)	Within ((~~3 work days~~)) 24 hours	√	
Hepatitis B surface antigen + pregnant women	Within 3 ((~~work~~)) business days	√	
Hepatitis B (chronic infection) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√	
Hepatitis C (acute infection)	Within 3 business days	√	
Hepatitis C ((~~—Acute and~~)) (chronic infection)	Monthly	√	
((~~Hepatitis (infectious), unspecified~~	~~Within 3 work days~~	~~√~~))	
Hepatitis D (acute and chronic infection)	Within 3 business days	√	
Hepatitis E (acute infection)	Within 24 hours	√	
Herpes simplex, neonatal and genital (initial infection only)	Within 3 ((~~work~~)) business days	√	
Human immunodeficiency virus (HIV) infection	Within 3 ((~~work~~)) business days	√	
Influenza, novel or unsubtypable strain	Immediately	√	
Influenza-associated death (lab confirmed)	Within 3 business days	√	
Legionellosis	Within ((~~3 work days~~)) 24 hours	√	
Leptospirosis	Within ((~~3 work days~~)) 24 hours	√	
Listeriosis	((~~Immediately~~)) Within 24 hours	√	
Lyme Disease	Within 3 ((~~work~~)) business days	√	
Lymphogranuloma venereum	Within 3 ((~~work~~)) business days	√	
Malaria	Within 3 ((~~work~~)) business days	√	
Measles (rubeola) – acute disease only	Immediately	√	
Meningococcal disease (invasive)	Immediately	√	
Monkeypox	Immediately	√	
Mumps (acute disease only)	Within ((~~3 work days~~)) 24 hours	√	
Outbreaks of suspected foodborne origin	Immediately	√	
Outbreaks of suspected waterborne origin	Immediately	√	
Paralytic shellfish poisoning	Immediately	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Pertussis	((~~Immediately~~)) Within 24 hours	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Pesticide poisoning (all other)	Within 3 ((~~work~~)) business days		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Prion disease	Within 3 business days	√	
Psittacosis	Within ((~~3 work days~~)) 24 hours	√	
Q Fever	Within ((~~3 work days~~)) 24 hours	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (((~~Including use of post-exposure prophylaxis~~))), suspected human exposure (suspected human rabies exposures due to a bite from or other exposure to an animal that is a local rabies reservoir species or suspected of being infected with rabies)	((~~Within 3 work days~~)) Immediately	√	
Relapsing fever (borreliosis)	((~~Immediately~~)) Within 24 hours	√	
Rubella (including congenital rubella syndrome) (acute disease only)	Immediately	√	
Salmonellosis	((~~Immediately~~)) Within 24 hours	√	
SARS	Immediately	√	
Serious adverse reactions to immunizations	Within 3 ((~~work~~)) business days	√	
Shiga toxin-producing *E. coli* infections (enterohemorrhagic *E. coli* including, but not limited to, *E. coli* O157:H7)	Immediately	√	
Shigellosis	Immediately	√	
Smallpox	Immediately	√	
Syphilis	Within 3 ((~~work~~)) business days	√	
Tetanus	Within 3 ((~~work~~)) business days	√	
Trichinosis	Within 3 ((~~work~~)) business days	√	
Tuberculosis	Immediately	√	
Tularemia	((~~Within 3 work days~~)) Immediately	√	
((~~Typhus~~	~~Immediately~~	~~√~~))	
Vaccinia transmission	Immediately	√	
Vancomycin-resistant *Staphylococcus aureus* (not to include vancomycin-intermediate)	Within 24 hours	√	
Varicella-associated death	Within 3 business days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Vibriosis	Within ((~~3 work days~~)) 24 hours	√	
Viral hemorrhagic fever	Immediately	√	
Yellow fever	Immediately	√	
Yersiniosis	Within ((~~3 work days~~)) 24 hours	√	
Other rare diseases of public health significance	((~~Immediately~~)) Within 24 hours	√	
Unexplained critical illness or death	((~~Immediately~~)) Within 24 hours	√	

(√) Indicates which agency should receive case and suspected case reports.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-105 Duties of the health care provider. Health care providers shall:

(1) Notify the local health department where the patient resides ((~~(~~)), or, in the event that patient residence cannot be determined, ((~~notify~~)) the local health department ((~~where~~)) in which the health care providers practice((~~)~~)), regarding:

(a) Cases or suspected cases of notifiable conditions specified as notifiable to local health departments in Table HC-1 of WAC 246-101-101;

(b) Cases of conditions designated as notifiable by the local health officer within that health officer's jurisdiction;

(c) Outbreaks or suspected outbreaks of disease((~~. These patterns include~~)) including, but ((~~are~~)) not limited to, suspected or confirmed outbreaks of ((~~chickenpox~~)) varicella, influenza, viral meningitis, ((~~nosocomial~~)) health care-associated infection suspected due to contaminated food products or devices, or environmentally related disease;

(d) Known barriers which might impede or prevent compliance with orders for infection control or quarantine; and

(e) Name, address, and other pertinent information for any case, suspected case or carrier refusing to comply with prescribed infection control measures.

(2) Notify the department ((~~of health~~)) of conditions designated as notifiable to the local health department when:

(a) A local health department is closed or representatives of the local health department are unavailable at the time a case or suspected case of an immediately notifiable condition occurs;

(b) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

(3) Notify the department of pesticide poisoning that is fatal, causes hospitalization or occurs in a cluster.

(4) Notify the department ((~~as specified in Table HC-1~~)) regarding cases of notifiable conditions specified as notifiable to the department in Table HC-1 of WAC 246-101-101.

(5) Assure that positive ((~~cultures and~~)) preliminary test results and positive final test results for notifiable conditions of specimens referred to laboratories outside of Washington for testing are correctly notified to the local health department of the patient's residence or the department as specified in Table Lab-1 of WAC 246-101-201. This requirement can be satisfied by:

(a) Arranging for the referral laboratory to notify either the local health department, the department, or both; or

(b) Forwarding the notification of the test result from the referral laboratory to the local health department, the department, or both.

(6) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of disease.

(7) Provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to contacts who may have been exposed to the disease.

(8) Maintain responsibility for deciding date of discharge for hospitalized tuberculosis patients.

(9) Notify the local health officer of intended discharge of tuberculosis patients in order to assure appropriate outpatient arrangements are arranged.

(10) By July 1, 2011, when ordering a laboratory test for a notifiable condition as identified in Table HC-1 of WAC 246-101-101, providers must provide the laboratory with the following information for each test order:

(a) Patient name;

(b) Patient address including zip code;

(c) Patient date of birth;

(d) Patient sex;

(e) Name of the principal health care provider;

(f) Telephone number of the principal health care provider;

(g) Type of test requested;

(h) Type of specimen;

(i) Date of ordering specimen collection.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-110 Means of notification. ((~~(1) Conditions designated as:~~

((~~(a)~~)) Health care providers shall adhere to the following timelines and procedures:

(1) Conditions designated as immediately notifiable must be reported ((~~by telephone or by secure facsimile copy of a written case report~~)) to the local health officer or the department, as specified in Table HC-1((~~;~~

~~(b)~~)) of WAC 246-101-101, immediately as the time of diagnosis or suspected diagnosis. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the department, maintains after-hours emergency phone contacts for this purpose. A party sending a report by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.

(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, within twenty-four hours of diagnosis or suspected diagnosis, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency phone contact for the appropriate jurisdiction.

(3) Conditions designated as notifiable within three ((~~working~~)) business days must be reported to the local health officer or department, as specified in Table HC-1 of WAC 246-101-101, within three business days. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy ((~~to the local health officer or department as specified in Table HC-1~~)) of a case report; and

(((~~c~~))) (4) Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy ((~~to the local health officer or the department as specified in Table HC-1.~~

~~(2) The local health officer may authorize notifications by telephone or secure electronic transmission for cases and suspected cases of notifiable conditions specified as notifiable to local health departments.~~

~~(3) The state health officer may authorize notifications by telephone or secure electronic transmission for cases and suspected cases of notifiable conditions specified as notifiable to the department~~)) of a case report.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-115 Content of notifications. (1) For each condition listed in Table HC-1 of WAC 246-101-101, health care providers ((~~must~~)) shall provide the following information for each case or suspected case:

(a) Patient name;

(b) Patient address;

(c) Patient telephone number;

(d) Patient date of birth;

(e) Patient sex;

(f) Diagnosis or suspected diagnosis of disease or condition;

(g) Pertinent laboratory data, if available;

(h) Name ((~~and address or telephone number~~)) of the principal health care provider;

(i) Telephone number of the principal health care provider;

(j) Address of the principal health care provider;

(k) Name and ((~~address or~~)) telephone number of the person providing the report; and

(((~~(j)~~))) (l) Other information as the department may require on forms generated by the department.

(2) The local health officer or state health officer may require other information of epidemiological or public health value.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-120 Handling of case reports and medical information. (1) All records and specimens containing or accompanied by patient identifying information are confidential.

(2) Health care providers who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease, including the local health department.

(3) Health care providers with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose the identity of a person or release identifying information only as specified in RCW 70.24.105; and

(b) Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:

(i) Health care providers may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the health care provider requires the information for the patient's benefit.

(ii) Health care providers responsible for office management are authorized to permit access to a patient's medical information and medical record by medical staff or office staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

(c) Health care providers conducting a clinical HIV research project shall report the identity of an individual participating in the project unless:

(i) The project has been approved by an institutional review board; and

(ii) The project has a system in place to remind referring health care providers of their reporting obligations under this chapter.

(4) Health care providers shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

AMENDATORY SECTION (Amending WSR 06-16-117, filed 8/1/06, effective 9/1/06)

WAC 246-101-201 Notifiable conditions and laboratories. This section describes the conditions about which Washington's laboratories must notify public health authorities of on a statewide basis. The board finds that the conditions in ((~~the table below (~~))Table Lab-1((~~)~~)) of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. The board also finds that submission of specimens for many of these conditions will further prevent the spread of disease.

(1) Laboratory directors ((~~must~~)) shall notify public health authorities of positive ((~~cultures and~~)) preliminary test results and positive final test results of the conditions identified in Table Lab-1 of this section as individual case reports and provide specimen submissions ((~~using procedures described throughout this chapter~~)) following the requirements in WAC 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, and 246-101-230.

(2) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

((~~WAC 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, and 246-101-230 also include requirements for how notifications and specimen submissions are made, when they are made, the content of these notifications and specimen submissions, and how information regarding notifiable conditions cases must be handled and may be disclosed.~~))

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
((~~Arboviral Disease (Isolation; Detection of Viral Nucleic Acid or Antibody)~~)) Arboviruses (West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, Powassan, California serogroup, Chikungunya) Acute: IgM positivity PCR positivity Viral isolation	2 business days	√		On request
Bacillus anthracis (Anthrax)	Immediately	√		Culture (2 business days)
Blood Lead Level	Elevated Levels – 2 business days Nonelevated Levels – Monthly		√	
((~~Botulism (Foodborne)~~	~~Immediately~~	~~√~~		~~Serum and Stool - If available, submit suspect foods (2 days)~~
~~Botulism (Infant)~~	~~Immediately~~	~~√~~		~~Stool (2 days)~~
~~Botulism (Wound)~~	~~Immediately~~	~~√~~		~~Culture, Serum, Debrided tissue, or Swab sample (2 days)~~))
Bordetella pertussis (Pertussis)	2 business days	√		Culture, when available (2 business days)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Borrelia burgdorferi (Lyme disease)	2 business days	√		On request
Borrelia hermsii or *recurrentis* (Relapsing fever, tick- or louse-borne)	2 business days	√		On request
Brucella species (Brucellosis) (((~~*Brucella* species~~)))	((~~2 days~~)) Within 24 hours	√		((~~Subcultures~~)) Cultures (2 business days)
Burkholderia mallei and *pseudomallei*	Immediately	√		Culture (2 business days); additional specimens when available
Campylobacter species (Campylobacteriosis)	2 business days	√		On request
CD4 + (T4) lymphocyte counts and/or CD4 + (T4) (patients aged thirteen or older)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Chlamydia psittaci (Psittacosis)	Within 24 hours	√		On request
Chlamydia trachomatis ((~~infection~~))	2 business days	√		
((~~Cholera~~	~~Immediately~~	~~√~~		~~Culture (2 days)~~)))
Clostridium botulinum (Botulism)	Immediately	√		Serum and/or stool; any other specimens available (i.e., foods submitted for suspected foodborne case; debrided tissue submitted for suspected wound botulism) (2 business days)
Corynebacterium diphteriae (Diphtheria)	Immediately	√		Culture (2 business days)
Coxiella burnetti (Q fever)	Within 24 hours	√		Culture (2 business days)
Cryptococcus non *v. neoformans*	N/A	N/A		Culture (2 business days) or other specimens upon request
Cryptosporidium (Cryptosporidiosis)	2 business days	√		On request
Cyclospora cayetanenis (Cyclosporiasis)	2 business days	√		Specimen (2 business days)
((~~Diphtheria~~	~~2 days~~	~~√~~		~~Culture (2 days)~~
~~Disease of Suspected Bioterrorism Origin (examples): • Anthrax • Smallpox~~	~~Immediately~~	~~√~~		~~Culture (2 days)~~
~~Enterohemorrhagic *E. coli* (shiga-like toxin producing infections only) such as *E. coli* O157:H7 Infection~~	~~2 days~~	~~√~~		~~Culture (2 days)~~
~~Gonorrhea~~	~~2 days~~	~~√~~))		

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
E. coli – Refer to "Shiga toxin-producing *E. coli*"	Immediately	√		
Francisella tularensis (Tularemia)	Immediately	√		Culture or other appropriate clinical material (2 business days)
Giardia lamblia (Giardiasis)	2 business days	√		On request
Haemophilus influenzae (children < 5 years of age)	Immediately	√		Culture, from sterile sites only, when type is unknown (2 business days)
Hantavirus	Within 24 hours	√		On request
Hepatitis A ((~~(~~))virus (acute) by IgM ((~~positive~~))) positivity (Hepatocellular enzyme levels to accompany report)	((~~2 days~~)) Within 24 hours	√		On request
Hepatitis B virus (acute) by IgM positivity	Within 24 hours	√		On request
Hepatitis B virus – HBsAg (Surface antigen) – HBeAg (E antigen) – HBV DNA	Monthly	√		
Hepatitis C virus	Monthly	√		
Hepatitis D virus	2 business days	√		On request
Hepatitis E virus	Within 24 hours	√		On request
Human immunodeficiency virus (HIV) infection (for example, positive Western Blot assays, P24 antigen or viral culture tests)	2 business days	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Human immunodeficiency virus (HIV) infection (ll viral load detection test results - detectable and undetectable)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Influenza virus, novel or unsubtypable strain	Immediately	√		Isolate or clinical specimen (2 business days)
Legionella species (Legionellosis)	Within 24 hours	√		Culture (2 business days)
Leptospira species (Leptospirosis)	Within 24 hours	√		On request
Listeria monocytogenes (Listeriosis)	((~~2 days~~)) Within 24 hours	√		Culture (2 business days)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Measles virus (rubeola) Acute: IgM positivity PCR positivity	Immediately	√		((~~Serum~~)) Isolate or clinical specimen associated with positive result (2 business days)
((~~Meningococcal disease~~	~~2 days~~	~~√~~		~~Culture (Blood/CSF or other sterile sites) (2 days)~~
~~Pertussis~~	~~2 days~~	~~√~~		
~~Plague~~	~~Immediately~~	~~√~~		~~Culture or other appropriate clinical material (2 days)~~)))
Mumps virus Acute: IgM positivity PCR positivity	Within 24 hours	√		Isolate or clinical specimen associated with positive result (2 business days)
Mycobacterium tuberculosis (Tuberculosis)	2 business days		√	Culture (2 business days)
Mycobacterium tuberculosis (Tuberculosis) (Antibiotic sensitivity for first isolates)	2 business days		√	
Neisseria gonorrhoeae (Gonorrhea)	2 business days	√		
Neisseria meningitidis (Meningococcal disease)	Immediately	√		Culture (from sterile sites only) (2 business days)
Plasmodium species (Malaria)	2 business days	√		On request
Poliovirus Acute: IgM positivity PCR positivity	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Rabies virus (human or animal)	Immediately	√ (Pathology Report Only)		((~~Tissue or other appropriate clinical material (Upon request only)~~)) Clinical specimen associated with positive result (2 business days)
Salmonella species (Salmonellosis)	((~~2 days~~)) Within 24 hours	√		Culture (2 business days)
SARS-associated coronavirus	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Shiga toxin-producing *E. coli* (enterohemorrhagic *E. coli* including, but not limited to, *E. coli* O157:H7)	Immediately	√		Culture (2 business days) or specimen if no culture is available
Shigella species (Shigellosis)	((~~2 days~~)) Within 24 hours	√		Culture (2 business days)
Treponema pallidum (Syphilis)	2 business days	√		Serum (2 business days)
((~~Tuberculosis~~	~~2 days~~		~~√~~	~~Culture (2 days)~~

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
~~Tuberculosis (Antibiotic sensitivity for first isolates)~~	~~2 days~~		~~√~~	
~~Tularemia~~				~~Culture or other appropriate clinical material (2 days)~~
~~Other rare diseases of public health significance~~	~~Immediately~~	~~√~~))		
Trichinella species	2 business days	√		On request
Vancomycin-resistant *Staphylococcus aureus*	Within 24 hours	√		Culture (2 business days)
Variola virus (smallpox)	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Vibrio cholerae O1 or O139 (Cholera)	Immediately	√		Culture (2 business days)
Vibrio species (Vibriosis)	Within 24 hours	√		Culture (2 business days)
Viral hemorrhagic fever: Arenaviruses Bunyaviruses Filoviruses Flaviviruses	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Yellow fever virus	Immediately	√		Serum (2 business days)
Yersinia enterocolitica or *pseudotuberculosis*	Within 24 hours	√		On request
Yersinia pestis (Plague)	Immediately	√		Culture or other appropriate clinical material (2 business days)

(√) Indicates which agency should receive case and suspected case reports.

((~~Additional notifications that are requested but not mandatory include:~~

~~(1)~~)) (3) The local health department may request laboratory reporting of additional test results pertinent to an investigation of a notifiable condition (i.e., hepatocellular enzyme levels for hepatitis or negative stool test results on salmonellosis rescreening).

(4) Laboratory directors may notify ((~~either~~)) the local health department((~~s or~~)), the department, or both of other laboratory results ((~~through cooperative agreement.~~

~~(2) Laboratory directors may submit malaria cultures to the state public health laboratories~~)).

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-205 Responsibilities and duties of the laboratory director. (1) Laboratory directors shall:

(((~~1~~))) (a) Notify the local health department where the patient resides ((~~(~~)), or, in the event that patient residence cannot be determined, ((~~notify~~)) the local health department ((~~where~~)) in which the ordering health care provider practices, or the local health department in which the laboratory ((~~is located~~))) operates, regarding:

(((~~a~~))) (i) Positive ((~~cultures and~~)) preliminary test results and positive final test results of notifiable conditions specified as notifiable to the local health department in Table Lab-1.

(((~~b~~))) (ii) Positive ((~~cultures and~~)) preliminary test results and positive final test results of conditions specified as notifiable by the local health officer within that health officer's jurisdiction.

(((~~(2) If the laboratory is unable to determine the local health department of the patient's residence, the laboratory director shall notify the local health department in which the health care provider that ordered the laboratory test is located.~~

~~(3)~~)) (b) Notify the department ((~~of health~~)) of conditions designated as notifiable to the local health department when:

(((~~a~~))) (i) A local health department is closed or representatives of the local health department are unavailable at the time a positive ((~~culture or~~)) preliminary test result or positive final test result((~~s~~)) of an immediately notifiable condition occurs; or

(((~~b~~))) (ii) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

(((~~(4)~~))) (c) Notify the department of positive ((~~cultures and~~)) preliminary test results or positive final test results for conditions designated notifiable to the department in Table Lab-1.

(((~~(5)~~))) (d) Notify the department of nonelevated blood lead levels on a monthly basis.

(((~~(6)~~))) (e) Submit specimens for conditions noted in Table Lab-1 to the Washington state public health laboratories or other laboratory designated by the state health officer for diagnosis, confirmation, storage, or further testing.

(((~~(7)~~))) (f) Ensure that positive ((~~cultures and~~)) preliminary test results and positive final test results for notifiable conditions of specimens referred to other laboratories for testing are correctly notified to the correct local health department or the department. This requirement can be satisfied by:

(((~~(a)~~))) (i) Arranging for the referral laboratory to notify either the local health department, the department, or both; or

(((~~(b)~~))) (ii) Forwarding the notification of the test result from the referral laboratory to the local health department, the department, or both.

(((~~(8)~~))) (g) Cooperate with public health authorities during investigation of:

(((~~(a)~~))) (i) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(((~~(b)~~))) (ii) An outbreak or suspected outbreak of disease.

(((~~(9)~~))) (2) Laboratory directors may designate responsibility for working and cooperating with public health authorities to certain employees as long as designated employees are:

(a) Readily available; and

(b) Able to provide requested information in a timely manner.

(3) By July 1, 2011, when referring a specimen to another laboratory for a test for a notifiable condition, laboratory directors shall provide the laboratory with the following information for each test referral:

(a) Patient name;

(b) Full address of patient, or patient zip code at a minimum, when available in laboratory data base;

(c) Date of birth or age of patient, when available in laboratory data base;

(d) Sex of patient, when available in laboratory data base;

(e) Name of the principal health care provider;

(f) Telephone number of the principal health care provider;

(g) Address of the principal health care provider, when available;

(h) Type of test requested;

(i) Type of specimen; and

(j) Date of specimen collection.

(4) By January 1, 2013, laboratory data bases must have the ability to receive, store, and retrieve all of the data elements specified in subsection (3)(a) through (j) of this section.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-210 Means of specimen submission. ((~~Required laboratory specimen submissions as outlined in Table Lab-1 shall be forwarded within two days.~~)) (1) When submitting specimens as indicated in Table Lab-1 of WAC 246-101-201, laboratories shall ((~~follow the procedures below in submitting specimens:~~

~~(1)~~)) adhere to the following timelines and procedures:

(a) Specimens designated for submission within two business days must be in transit within two business days from the time the specimen is ready for packaging;

(b) Specimens designated for submission on request may be requested by the local health departments or the department. The laboratory shall ship a requested specimen within two business days of receiving the request, provided the specimen is still available at the time of the request. This is not intended to require laboratories to save specimens indefinitely in anticipation of a request.

(2) Local health jurisdictions may temporarily waive specimen submission for circumstances at their discretion by communication with individual laboratories.

(3) Laboratories located in King County shall forward required specimen submissions (except tuberculosis cultures) to:

Public Health Seattle and King County - Laboratory
325 9th Avenue
Box 359973
Seattle, WA 98104-2499

(((~~(2)~~))) (4) Laboratories located in King County shall forward required tuberculosis cultures to:

Washington State Public Health Laboratories
Washington State Department of Health
1610 NE 150th Street
Seattle, WA 98155

(((~~(3)~~))) (5) Laboratories located outside of King County shall forward all required specimen submissions to:

Washington State Public Health Laboratories
Washington State Department of Health
1610 NE 150th Street
Seattle, WA 98155

(((~~(4)~~))) (6) The state health officer may designate additional laboratories as public health referral laboratories.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-215 Content of documentation accompanying specimen submission. For each condition listed in Table Lab-1 of WAC 246-101-201, laboratory directors ((~~must~~)) shall provide the following information with each specimen submission:

(1) Type of specimen tested;
(2) Name of reporting laboratory;
(3) Telephone number of reporting laboratory;
(4) Date of specimen ((~~collected~~)) collection;
(5) Requesting health care provider's name;

(6) Requesting health care provider's phone number ((~~or address, or both~~));

(7) Requesting health care provider's address, when available;

(8) Test result;

(((~~(8)~~)) (9) Name of patient (((~~if available), or patient identifier otherwise~~));

(((~~(9)~~)) (10) Sex of patient ((~~(if~~)), when available((~~)~~)) in laboratory data base;

(((~~(10)~~)) (11) Date of birth or age of patient ((~~(if~~)), when available((~~)~~)) in laboratory data base;

(((~~(11)~~)) (12) Full address of patient ((~~(if~~)), or patient zip code at a minimum, when available((~~)~~)) in laboratory data base;

(((~~(12)~~)) (13) Telephone number of patient ((~~(if~~)), when available((~~)~~)) in laboratory data base;

(((~~(13)~~)) (14) Other information of epidemiological value ((~~(if~~)), when available((~~)~~)).

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-220 Means of notification for positive ((~~cultures or~~)) preliminary test results and positive final test results. (((~~(1) Conditions designated as:~~

~~(a)~~)) Laboratory directors shall adhere to the following timelines and procedures:

(1) Conditions designated as immediately notifiable must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, immediately at the time of positive preliminary test result or positive final test result. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the department, maintains after-hours emergency telephone contacts for this purpose. A party sending notification by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.

(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, within twenty-four hours of positive preliminary test result or positive final test result, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency phone contact for the appropriate jurisdiction.

(3) Conditions designated as notifiable within two business days must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, within two business days. Notification may be sent by ((~~written case report~~)) secure electronic transmission, telephone, or secure facsimile copy ((~~to the local health officer or the department as specified in Table Lab-1 within two working days~~)) of a case report; and

(((~~(b)~~)) (4) Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy ((~~to the local health officer or the department as specified in Table Lab-1.~~

~~(2) The local health officer may authorize notifications by telephone or secure electronic transmission for cases and suspected cases of notifiable conditions specified as notifiable to local health departments.~~

~~(3) The state health officer may authorize notifications by telephone or secure electronic transmission for cases and suspected cases of notifiable conditions specified as notifiable to the department~~)) of a case report.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-225 Content of notifications for positive ((~~cultures or~~)) preliminary test results and positive final test results. (1) For each condition listed in Table Lab-1 of WAC 246-101-201, laboratory directors must provide the following information for each positive culture or suggestive test result:

(a) Type of specimen tested;

(b) Name of reporting laboratory;

(c) Telephone number of reporting laboratory;

(d) Date of specimen ((~~collected~~)) collection;

(e) Date specimen received by reporting laboratory;

(f) Requesting health care provider's name;

(g) Requesting health care provider's phone number ((~~or address, or both~~));

(h) Requesting health care provider's address, when available;

(i) Test result;

(((~~(i)~~)) (j) Name of patient (((~~if available), or patient identifier otherwise~~));

(((~~(j)~~)) (k) Sex of patient ((~~(if~~)), when available((~~)~~)) in laboratory data base;

(((~~(k)~~)) (l) Date of birth or age of patient ((~~(if~~)), when available((~~)~~)) in laboratory data base; and

(((~~(l) Other information of epidemiological value (if available).~~)) (m) Full address of patient, or patient zip code at a minimum, when available in laboratory data base.

(2) Local health officers and the state health officer may require laboratory directors to report other information of epidemiological or public health value.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-230 Handling of case reports and medical information. (1) All records and specimens containing or accompanied by patient identifying information are confidential. The Washington state public health laboratories, other laboratories approved as public health referral laboratories, and any persons, institutions, or facilities submitting specimens or records containing patient-identifying information shall maintain the confidentiality of identifying information accompanying submitted laboratory specimens.

(2) Laboratory directors shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

(3) Laboratory directors and personnel working in laboratories who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(4) Laboratory directors and personnel working in laboratories with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose identity of a person or release identifying information only as specified in RCW 70.24.105; and

(b) Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:

(i) Laboratory directors and personnel working in laboratories may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the laboratory director or personnel working in the laboratory require((~~s~~)) the information for the patient's benefit.

(ii) Laboratory directors are authorized to permit access to a patient's medical information and medical record by laboratory staff or office staff to carry out duties required for care and treatment of a patient ((~~and~~)), the management of medical information, and the management of the patient's medical record.

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

WAC 246-101-301 Notifiable conditions and health care facilities. This section describes the conditions that Washington's health care facilities must notify public health authorities of on a statewide basis. The board finds that the conditions in ((~~the table below (~~))Table HF-1((~~)~~)) of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions((~~. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction~~)).

(1) Health care facilities ((~~are required to~~)) shall notify public health authorities of cases that occur in their facilities of the conditions identified in Table HF-1 of this section following the requirements in WAC 246-101-305, 246-101-310, 246-101-315, and 246-101-320. This is not intended to require health care facilities to confirm the absence of conditions listed in Table HF-1 in facility patients.

(2) Health care facilities may choose to assume the notification for their health care providers for conditions designated in Table HF-1 of this section.

(3) Health care facilities may not assume the reporting requirements of laboratories that are components of the health care facility.

(4) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

((~~WAC 246-101-305, 246-101-310, 246-101-315, and 246-101-320 also include requirements for how notifications shall be made, when they are made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.~~))

Table HF-1 (Conditions Notifiable by Health Care Facilities)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 ((~~work~~)) business days		√
((~~Animal Bites~~	~~Immediately~~	~~√~~))	
Anthrax	Immediately	√	
Arboviral Disease (acute disease only including, but not limited to, West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, and Powassan)	Within 3 ((~~work~~)) business days	√	
Asthma, occupational	Monthly		√
Birth Defects – Abdominal Wall Defects (inclusive of gastroschisis and omphalocele)	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Down Syndrome	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Birth Defects – Hypospadias	Monthly		√
Birth Defects – Limb reductions	Monthly		√
Birth Defects – Neural Tube Defects (inclusive of anencephaly and spina bifida)	Monthly		√
Birth Defects – Oral Clefts (inclusive of cleft lip with/without cleft palate)	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis (*Brucella* species)	((~~Immediately~~)) Within 24 hours	√	
Burkholderia mallei (Glanders) and *pseudomallei* (Melioidosis)	Immediately	√	
Cancer (*See chapter 246-430 WAC*)	Monthly		√
Chancroid	Within 3 ((~~work~~)) business days	√	
Chlamydia trachomatis infection	Within 3 ((~~work~~)) business days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 ((~~work~~)) business days	√	
Cyclosporiasis	Within 3 ((~~work~~)) business days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (((~~including):~~ ~~• Anthrax~~ ~~• Smallpox~~))	Immediately	√	
((~~Disease of suspected foodborne origin (communicable disease clusters only)~~	~~Immediately~~	~~√~~	
~~Disease of suspected waterborne origin (communicable disease clusters only)~~	~~Immediately~~	~~√~~	
~~Enterohemorrhagic *E. coli* (shiga-like toxin producing infections only) such as *E. coli* O157:H7 Infection~~	~~Immediately~~	~~√~~))	
Domoic acid poisoning	Immediately	√	
E. coli – Refer to "Shiga toxin-producing *E. coli*"	Immediately	√	
Emerging condition with outbreak potential	Immediately	√	
Giardiasis	Within 3 ((~~work~~)) business days	√	
Gonorrhea	Within 3 ((~~work~~)) business days	√	
Granuloma inguinale	Within 3 ((~~work~~)) business days	√	
Gunshot wounds (nonfatal)	Monthly		√
Haemophilus influenzae (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 ((~~work~~)) business days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
((~~Hemolytic uremic syndrome~~	~~Immediately~~	~~√~~))	
Hepatitis A (acute infection)	((~~Immediately~~)) Within 24 hours	√	
Hepatitis B (acute infection)	Within ((~~3 work days~~)) 24 hours	√	
Hepatitis B surface antigen + pregnant women	Within 3 ((~~work~~)) business days	√	
Hepatitis B (chronic infection) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√	
Hepatitis C – Acute infection	Within 3 business days	√	
Hepatitis C – ((~~Acute and~~)) Chronic infection	Monthly	√	
((~~Hepatitis (infectious), unspecified~~	~~Within 3 work days~~	~~√~~))	
Hepatitis D (acute and chronic infection)	Within 3 business days	√	
Hepatitis E (acute infection)	Within 24 hours	√	
Human immunodeficiency virus (HIV) infection	Within 3 ((~~work~~)) business days	√	
Influenza, novel or unsubtypable strain	Immediately	√	
Influenza-associated death (laboratory confirmed)	Within 3 business days	√	
Legionellosis	Within ((~~3 work days~~)) 24 hours	√	
Leptospirosis	Within ((~~3 work days~~)) 24 hours	√	
Listeriosis	((~~Immediately~~)) Within 24 hours	√	
Lyme Disease	Within 3 ((~~work~~)) business days	√	
Lymphogranuloma venereum	Within 3 ((~~work~~)) business days	√	
Malaria	Within 3 ((~~work~~)) business days	√	
Measles (rubeola) – Acute disease only	Immediately	√	
Meningococcal disease (invasive)	Immediately	√	
Monkeypox	Immediately	√	
Mumps (acute disease only)	Within ((~~3 work days~~)) 24 hours	√	
Outbreak of suspected foodborne origin	Immediately	√	
Outbreak of suspected waterborne origin	Immediately	√	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	((~~Immediately~~)) Within 24 hours	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Prion disease	Within 3 business days	√	
Psittacosis	Within ((~~3 work days~~)) 24 hours	√	
Q Fever	Within ((~~3 work days~~)) 24 hours	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (((~~Use of post-exposure prophylaxis~~))), suspected human exposure (Suspected human rabies exposures due to a bite from or other exposure to an animal that is a local rabies reservoir species or suspected of being infected with rabies)	((~~Within 3 work days~~)) Immediately	√	
Relapsing fever (borreliosis)	((~~Immediately~~)) Within 24 hours	√	
Rubella, acute disease only (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	((~~Immediately~~)) Within 24 hours	√	
SARS	Immediately	√	
Serious adverse reactions to immunizations	Within 3 ((~~work~~)) business days	√	
Shiga toxin-producing *E. coli* infections (enterohemorrhagic *E. coli* including, but not limited to, *E. coli* O157:H7)	Immediately	√	
Shigellosis	Immediately	√	
Smallpox	Immediately	√	
Syphilis	Within 3 ((~~work~~)) business days	√	
Tetanus	Within 3 ((~~work~~)) business days	√	
Trichinosis	Within 3 ((~~work~~)) business days	√	
Tuberculosis	Immediately	√	
Tularemia	((~~Within 3 work days~~)) Immediately	√	
((~~Typhus~~	~~Immediately~~	~~√~~))	
Vaccinia transmission	Immediately	√	
Vancomycin-resistant *Staphylococcus aureus* (not to include vancomycin-intermediate)	Within 24 hours	√	
Varicella-associated death	Within 3 business days	√	
Vibriosis	Within ((~~3 work days~~)) 24 hours	√	
Viral hemorrhagic fever	Immediately	√	
Yellow fever	Immediately	√	
Yersiniosis	Within ((~~3 work days~~)) 24 hours	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Other rare diseases of public health significance	((~~Immediately~~)) Within 24 hours	√	
Unexplained critical illness or death	((~~Immediately~~)) Within 24 hours	√	

(√) Indicates which agency should receive case and suspected case reports.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-305 Duties of the health care facility. (1) Health care facilities shall:

((~~(1)~~)) (a) Notify the local health department where the patient resides ((~~(~~)), or, in the event that patient residence cannot be determined, ((~~notify~~)) the local health department where the health care facility is located((~~)~~)), regarding:

((~~(a)~~)) (i) Cases of notifiable conditions specified as notifiable to the local health department in Table HF-1 of WAC 246-101-301 that occur or are treated in the health care facility.

((~~(b)~~)) (ii) Cases of conditions specified as notifiable by the local health officer within that health officer's jurisdiction that occur or are treated in the health care facility.

((~~(c)~~)) (iii) Suspected cases of notifiable conditions for conditions that are designated immediately notifiable in Table HF-1 of WAC 246-101-301 that occur or are treated in the health care facility.

((~~(d)~~)) (iv) Outbreaks or suspected outbreaks of disease that occur or are treated in the health care facility((~~. These patterns include~~)) including, but ((~~are~~)) not limited to, suspected or confirmed outbreaks of ((~~chickenpox~~)) varicella, influenza, viral meningitis, ((~~nosocomial~~)) health care-associated infection suspected due to contaminated products or devices, or environmentally related disease. ((~~Reports of outbreaks and suspected outbreaks of disease are to be made to the local health officer.~~

~~(e)~~)) (v) Known barriers which might impede or prevent compliance with orders for infection control or quarantine; and

((~~(f)~~)) (vi) Name, address, and other pertinent information for any case, suspected case or carrier refusing to comply with prescribed infection control measures.

((~~(2)~~)) (b) Notify the department ((~~of health~~)) of conditions designated as notifiable to the local health department when:

((~~(a)~~)) (i) A local health department is closed or representatives of the local health department are unavailable at the time a case or suspected case of an immediately notifiable condition as specified in Table HF-1 of WAC 246-101-301 occurs;

((~~(b)~~)) (ii) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

((~~(3)~~)) (c) Notify the department as specified in Table HF-1 of WAC 246-101-301 regarding cases of notifiable conditions specified as notifiable to the department.

((~~(4)~~)) (d) Notify the department of cancer incidence as required by chapter 246-430 WAC.

((~~(5)~~)) (e) Ensure that positive ((~~cultures and~~)) preliminary test results and positive final test results for notifiable conditions of specimens referred to laboratories outside of Washington for testing are correctly notified to the correct local health department as specified in Table Lab-1 of WAC 246-101-201. This requirement can be satisfied by:

((~~(a)~~)) (i) Arranging for the referral laboratory to notify ((~~either~~)) the local health department, the department, or both; or

((~~(b)~~)) (ii) Receiving the test result from the referral laboratory, and forwarding the notification to the local health department, the department, or both.

((~~(6)~~)) (f) Cooperate with public health authorities during investigation of:

((~~(a)~~)) (i) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

((~~(b)~~)) (ii) An outbreak or suspected outbreak of disease.

((~~(7)~~)) (g) Provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to ((~~contacts~~)) other persons who may have been exposed to the communicable disease.

((~~(8)~~)) (h) Maintain an infection control program as described in WAC ((~~246-320-265~~)) 246-320-176 for hospitals and WAC 246-330-176 for ambulatory surgical facilities.

((~~(9)~~)) (2) Health care facilities may assume the burden of notification for health care providers practicing within the health care facility where more than one health care provider is in attendance for a patient with a notifiable condition.

((~~(10)~~)) (3) Health care facilities may not assume the burden of notification for laboratories within the health care facility. Laboratories within a health care facility must submit specimens to the Washington state public health laboratories and notify public health authorities of notifiable conditions as specified in Table Lab-1 of WAC 246-101-201.

(4) By July 1, 2011, when ordering a laboratory test for a notifiable condition, health care facilities must provide the laboratory with the following information for each test order:

(a) Patient name;

(b) Patient address including zip code;

(c) Patient date of birth;

(d) Patient sex;

(e) Name of the principal health care provider;

(f) Telephone number of the principal health care provider;

(g) Type of test requested;

(h) Type of specimen;

(i) Date of ordering specimen collection.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-310 Means of notification. (((~~(1) Conditions designated as:~~

~~(a)~~)) Health care facilities shall adhere to the following timelines and procedures:

(1) Conditions designated as immediately notifiable must be reported ((~~by telephone or by secure facsimile copy of a written case report~~)) to the local health officer or the department as specified in Table HF-1((~~;~~

~~(b)~~)) immediately at the time of diagnosis or suspected diagnosis. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the department, maintains after-hours emergency phone contacts for this purpose. A party sending notification by secure facsimile copy or secure electronic transmission during normal public health business hours must confirm immediate receipt by a live person.

(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table HF-1 of WAC 246-101-301, within twenty-four hours of diagnosis or suspected diagnosis, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency telephone contact for the appropriate jurisdiction;

(3) Conditions designated as notifiable within three ((~~working~~)) business days must be reported to the local health officer or the department as specified in Table HF-1 of WAC 246-101-301 within three business days. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy ((~~to the local health officer or department as specified in Table HF-1~~)) of a case report; and

(((~~c~~))) (4) Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department as specified in Table HF-1 of WAC 246-101-301 on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy ((~~to the local health officer or the department as specified in Table HF-1.~~

~~(2) The local health officer may authorize notifications by telephone or secure electronic transmission for cases and suspect cases of notifiable conditions specified as notifiable to local health departments.~~

~~(3) The state health officer may authorize notifications by telephone or secure electronic transmission for cases and suspected cases of notifiable conditions specified as notifiable to the department~~)) of a case report.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-315 Content of notifications. (1) For each condition listed in Table HF-1, health care facilities must provide the following information for each case or suspected case:

(a) Patient name;

(b) Patient address including zip code;

(c) Patient telephone number;

(d) Patient date of birth;

(e) Patient sex;

(f) Diagnosis or suspected diagnosis of disease or condition;

(g) Pertinent laboratory data (if available);

(h) Name ((~~and address or telephone number~~)) of the principal health care provider;

(i) Telephone number of the principal health care provider;

(j) Address of the principal health care provider;

(k) Name and ((~~address or~~)) telephone number of the person providing the report; and

(((~~j~~))) (l) Other information as the department may require on forms generated by the department.

(2) The local health officer or state health officer may require other information of epidemiological or public health value.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-320 Handling of case reports and medical information. (1) All records and specimens containing or accompanied by patient identifying information are confidential.

(2) Personnel in health care facilities who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(3) Personnel in health care facilities with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose the identity of a person or release identifying information only as specified in RCW 70.24.105; and

(b) Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:

(i) Health care providers may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient.

(ii) This means that information shared impacts the care or treatment decisions concerning the patient; and the health care provider requires the information for the patient's benefit.

(4) Personnel responsible for health care facility management are authorized to permit access to medical information as necessary to fulfill professional duties. Health care facility administrators shall advise those persons permitted access under this section of the requirement to maintain confidentiality of such information as defined under this section and chapter 70.24 RCW. Professional duties means the following activities or activities that are functionally similar ((~~activities~~)):

(a) Medical record or chart audits;

(b) Peer reviews;

(c) Quality assurance;

(d) Utilization review purposes;

(e) Research as authorized under chapters 42.48 and 70.02 RCW;

(f) Risk management; and

(g) Reviews required under federal or state law or rules.

(5) Personnel responsible for health care facility management are authorized to permit access to a patient's medical information and medical record by medical staff or health care facility staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

(6) Health care facilities conducting a clinical HIV research project shall report the identity of an individual participating in the project unless:

(a) The project has been approved by an institutional review board; and

(b) The project has a system in place to remind referring health care providers of their reporting obligations under this chapter.

(7) Health care facilities shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-405 Responsibilities of veterinarians. (1) Veterinarians shall:

((~~(1)~~)) (a) Notify the local health officer of the jurisdiction in which the human resides of any suspected human case or suspected human outbreak based on the human's exposure to a confirmed animal case of any disease listed in Table ((~~HC-1 that is transmissible from animals to humans. Examples of these zoonotic diseases include:~~

~~(a) Anthrax;~~

~~(b) Brucellosis;~~

~~(c) Encephalitis, viral;~~

~~(d) Plague;~~

~~(e) Rabies;~~

~~(f) Psittacosis;~~

~~(g) Tuberculosis; and~~

~~(h) Tularemia.~~)) V-1 of this section:

Table V-1 (Conditions Notifiable by Veterinarians)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department
Anthrax	Immediately	√
Arboviral Disease	Within 24 hours	√
Brucellosis (*Brucella* species)	Within 24 hours	√
Burkholderia mallei (Glanders)	Immediately	√
Disease of suspected bioterrorism origin (including but not limited to anthrax)	Immediately	√
E. coli – Refer to "Shiga toxin-producing *E. coli*"	Immediately	√
Emerging condition with outbreak potential	Immediately	√
Influenza virus, novel or unsubtypable strain	Immediately	√
Leptospirosis	Within 24 hours	√
Plague	Immediately	√
Psittacosis	Within 24 hours	√
Q Fever	Within 24 hours	√
Rabies (suspected human or animal)	Immediately	√
Shiga toxin-producing *E. coli* infections (enterohemorrhagic *E. coli* including, but not limited to, *E. coli* O157:H7)	Immediately	√
Tularemia	Immediately	√

(√) Indicates that the condition is notifiable to the local health department.

((~~(2)~~)) (b) Cooperate with public health authorities in the investigation of cases ((~~and~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of zoonotic disease.

((~~(3)~~)) (c) Cooperate with public health authorities in the implementation of infection control measures including isolation and quarantine.

(2) The department of agriculture is requested to inform the department of health of reported animal cases of the conditions in Table V-1 of this section. The department of health shall then notify the pertinent local health jurisdiction.

(3) The department of agriculture is requested to require submission by veterinarians of the following types of specimens or isolates and shall forward to the Washington state public health laboratories within twenty-four hours of receipt:

(a) *Mycobacterium tuberculosis*.

(b) *Cryptococcus* non *v. neoformans*.
(c) Vancomycin-resistant *Staphylococcus aureus*.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-410 Responsibilities of food service establishments. The person in charge of a food service establishment shall:

(1) Notify the local health department of potential foodborne disease as required in WAC 246-215-260.

(2) Cooperate with public health authorities in the investigation of cases ((~~and~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of foodborne or waterborne disease. This includes the release of the name and other pertinent information about food handlers diagnosed with a communicable disease as it relates to a foodborne or waterborne disease investigation.

(3) Not release information about food handlers with a communicable disease to other employees or the general public.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-415 Responsibilities of child day care facilities. Child day care facilities shall:

(1) Notify the local health department of cases ((~~or~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of notifiable conditions that may be associated with the child day care facility.

(2) Consult with a health care provider or the local health department for information about the control and prevention of infectious or communicable disease, as necessary.

(3) Cooperate with public health authorities in the investigation of cases ((~~and~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of disease that may be associated with the child day care facility.

(4) ((~~Child day care facilities shall~~)) Establish and implement policies and procedures to maintain confidentiality related to medical information in their possession.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-420 Responsibilities of schools. Schools shall:

(1) Notify the local health department of cases ((~~or~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of disease that may be associated with the school.

(2) Cooperate with the local health department in monitoring influenza.

(3) Consult with a health care provider or the local health department for information about the control and prevention of infectious or communicable disease, as necessary.

(4) Cooperate with public health authorities in the investigation of cases ((~~and~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of disease that may be associated with the school.

(5) ((~~Personnel in schools who know of a person with a notifiable condition shall~~)) Release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(6) Schools shall establish and implement policies and procedures to maintain confidentiality related to medical information in their possession.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-425 Responsibilities of the general public. (1) Members of the general public shall:

(a) Cooperate with public health authorities in the investigation of cases ((~~and~~)), suspected cases, ((~~or~~)) outbreaks, and suspected outbreaks of notifiable conditions or other communicable diseases; and

(b) Cooperate with the implementation of infection control measures, including isolation and quarantine.

(2) Members of the general public may notify the local health department of any case ((~~or~~)), suspected case, ((~~or~~)) outbreak, or potential outbreak of communicable disease.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-101-505 Duties of the local health officer or the local health department. (1) Local health officers or the local health department shall:

((~~(1)~~)) (a) Review and determine appropriate action for:

((~~(a)~~)) (i) Each reported case or suspected case of a notifiable condition;

((~~(b)~~)) (ii) Any disease or condition considered a threat to public health; and

((~~(c)~~)) (iii) Each reported outbreak or suspected outbreak of disease, requesting assistance from the department in carrying out investigations when necessary((~~;~~)).

((~~(2)~~)) (b) Establish a system at the local health department for maintaining confidentiality of written records and written and telephoned notifiable conditions case reports;

((~~(3)~~)) (c) Notify health care providers, laboratories, and health care facilities within the jurisdiction of the health department of requirements in this chapter;

((~~(4)~~)) (d) Notify the department of cases of any condition notifiable to the local health department (except animal bites) upon completion of the case investigation;

((~~(5)~~)) (e) Distribute appropriate notification forms to persons responsible for reporting;

((~~(6)~~)) (f) Notify the principal health care provider, if possible, prior to initiating a case investigation by the local health department((~~.~~));

((~~(7)~~)) (g) Carry out the HIV partner notification requirements of WAC 246-100-072((~~.~~));

((~~(8)~~)) (h) Allow laboratories to contact the health care provider ordering the diagnostic test before initiating patient contact if requested and the delay is unlikely to jeopardize public health;

((~~(9)~~)) (i) Conduct investigations and institute control measures in accordance with chapter 246-100 WAC((~~;~~)).

((~~(10)~~)) (2) The local health department may adopt alternate arrangements for meeting the reporting requirements under this chapter through cooperative agreement between

the local health department and any health care provider, laboratory or health care facility;

((~~(11)~~)) (3) Each local health officer has the authority to:

(a) Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider;

(b) Require any person suspected of having a ((~~reportable disease or~~)) notifiable condition to submit to examinations required to determine the presence of the ((~~disease or~~)) condition;

(c) Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary;

(d) Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-510 Means of notification. ((~~Local health departments shall:~~))

(1) Local health departments shall notify the department immediately by telephone or secure electronic data transmission of any ((~~notification of a~~)) case or suspected case of:

(a) Botulism;

(b) Cholera;

(c) Diptheria;

(d) Disease of suspected bioterrorism origin ((~~(examples: Anthrax, plague, smallpox);~~

~~(d) Hemolytic uremic syndrome~~));

(e) Emerging condition with outbreak potential;

(f) Influenza, novel strain;

(g) Measles;

((~~(f)~~)) (h) Paralytic shellfish poisoning;

((~~(g)~~)) (i) Plague;

(j) Poliomyelitis; ((~~and~~

~~(h) Unexplained critical illness or death.~~))

(k) Rabies, human;

(l) SARS;

(m) Smallpox;

(n) Tularemia;

(o) Viral hemorrhagic fever; and

(p) Yellow fever.

(2) Immediate notifications of cases and suspected cases ((~~must~~)) shall include:

(a) Patient name;

(b) Patient's notifiable condition; and

(c) Condition onset date.

(3) For each case of any condition notifiable to the local health department, submit to the department case report either on a form provided by the department or in a format approved by the department. Case reports must be sent by secure electronic transmission or telephone within seven days of completing the case investigation. If the case investigation is not complete within twenty-one days of notification, pertinent information collected from the case investigation must be sent to the department and shall include:

(a) Patient name;

(b) Patient's notifiable condition or suspected condition;

(c) Source or suspected source; and

(d) Condition onset date.

(4) Local health officials will report asymptomatic HIV infection cases to the department according to a standard code developed by the department.

(5) When notified of an outbreak or suspected outbreak of illness due to an infectious agent or toxin, the local health department shall:

(a) Notify the department immediately by telephone or secure electronic data transmission ((~~of any notification of an outbreak or suspected outbreak of foodborne or waterborne or other communicable disease~~)).

(((~~(4) For outbreaks or suspected outbreaks of foodborne or waterborne disease, notifications must~~)) (b) Include in the initial notification:

(((~~(a)~~))) (i) Organism or suspected organism;

(((~~(b)~~))) (ii) Source or suspected source; and

(((~~(c)~~))) (iii) Number of persons affected.

(((~~(5) Submit a written case report either on a form provided by the department or in a format approved by the department for each case of any condition notifiable to the local health department, except animal bites, within seven days of completing the case investigation. The department may waive this requirement if telephone or secure electronic data transmission provided pertinent information.~~

~~(6) Local health officials will report asymptomatic HIV infection cases to the department according to a standard code developed by the department.~~

~~(7) For any case not immediately notifiable to the department forward pertinent information collected on the case investigation for each case of any condition notifiable to the local health department to the department if the case investigation is not complete within twenty-one days of notification, including:~~

~~(a) Name;~~

~~(b) Condition or suspected condition;~~

~~(c) Source or suspected source; and~~

~~(d) Onset date.~~

~~(8)~~)) (c) Within seven days of completing the outbreak investigation, submit to the department a ((~~written~~)) report on forms provided by the department or in a format approved by the department ((~~for an outbreak of any notifiable condition within seven days of completing the investigation~~)). The department may waive this requirement if telephone or secure electronic data transmission provided pertinent information.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-515 Handling of case reports and medical information. (1) Local health officers or local health departments shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:

(a) To employees of the local health department, another local health department, or other official agencies needing to know for the purpose of administering public health laws and these regulations;

(b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control;

(2) Local health officers shall require and maintain signed confidentiality agreements with all local health department employees with access to identifying information related to a case or suspected case of a person diagnosed with a notifiable condition. The agreements will be renewed at least annually and will include reference to criminal and civil penalties for violation of chapters 70.02 and 70.24 RCW and other administrative actions that may be taken by the local health department.

(3) Local health departments may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-605 Duties of the department of health. (1) The department shall:

(((~~1~~))) (a) Provide consultation and technical assistance to local health departments and the department of labor and industries investigating notifiable conditions reports upon request.

(((~~2~~))) (b) Provide consultation and technical assistance to health care providers, laboratories, health care facilities, and others required to make notifications to public health authorities of notifiable conditions upon request.

(((~~3~~))) (c) Develop, maintain, and make available for local health departments guidance on investigation and control measures for notifiable communicable disease conditions.

(d) Develop and ((~~distribute~~)) make available forms for the submission of notifiable conditions data to local health departments, health care providers, laboratories, health care facilities, and others required to make notifications to public health authorities of notifiable conditions.

(((~~4~~))) (e) Maintain a twenty-four hour ((~~department~~)) telephone number for reporting notifiable conditions.

(((~~5~~))) (f) Develop routine data dissemination mechanisms that describe and analyze notifiable conditions case investigations and data. These may include annual and monthly reports and other mechanisms for data dissemination as developed by the department.

(((~~6~~))) (g) Conduct investigations and institute control measures ((~~consistent with those indicated in the seventeenth edition, 2000 of *Control of Communicable Diseases Manual*, edited by James Chin, published by the American Public Health Association (copy is available for review at the department and at each local health department), except:~~

~~(a) When superseded by more up-to-date measures; or~~

~~(b) When other measures are more specifically related to Washington state~~)) as necessary.

(((~~7~~))) (h) Document the known environmental, human, and ((~~or~~)) other variables associated with a case or suspected case of pesticide poisoning.

(((~~8~~))) (i) Report the results of the pesticide investigation to the principal health care provider named in the case report form and to the local health officer in whose jurisdiction the exposure has occurred.

(((~~9~~))) (2) The department may:

(a) Negotiate alternate arrangements for meeting reporting requirements under this chapter through cooperative agreement between the department and any health care provider, laboratory, or health care facility.

(((~~10) The department may~~)) (b) Consolidate reporting for notifiable conditions from any health care provider, laboratory, or health care facility, and relieve that health care provider, laboratory, or health care facility from reporting directly to each local health department, if the department can provide the report to the local health department within the same time as the local health department would have otherwise received it.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-610 Handling of case reports and medical information. (1) The state health officer or designee shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:

(a) To employees of the local health department, other local health departments, or other official agencies needing to know for the purpose of administering public health laws and these regulations.

(b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control.

(c) For research approved by an institutional review board as indicated under chapter 42.48 RCW. The institutional review board applies federal and state privacy laws to research requests for confidential information.

(2) ((~~The department shall require and maintain signed confidentiality agreements with~~)) All department employees, contractors, and others with access to identifying information related to a case or suspected case of a person diagnosed with a notifiable condition shall be required to sign a confidentiality agreement. ((~~These~~)) The confidentiality agreements ((~~will~~)) shall be renewed ((~~at least~~)) annually and shall include reference to criminal and civil penalties for violation of chapters 70.02 and 70.24 RCW and other administrative actions that may be taken by the department.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-615 Requirements for data dissemination. The department shall:

(1) Distribute periodic epidemiological summary reports and an annual review of public health issues to local health officers and local health departments.

(2) Upon execution of a data sharing agreement, make available any data or other documentation in its possession ((~~for~~)) regarding notifiable conditions reported directly to the department to local health officers or their designees ((~~upon~~

~~execution of a data sharing agreement~~)) within two days of a request.

(3) Periodically distribute statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-625 Content of notifications to the department of labor and industries. Unless otherwise prohibited by law, the department shall make available any data described in WAC 246-101-615 and 246-101-620 in its possession ((~~in sharing data as described in WAC 246-101-615, 246-101-620, and 246-101-625~~)) to the department of labor and industries.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-701 Notifiable conditions and the department of labor and industries. ((~~This section~~)) WAC 246-101-701 through 246-101-730 describes the authorities and responsibilities of the department of labor and industries in collecting, analyzing, investigating and transmitting case information from notifiable conditions case reports.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-725 Requirements for notification to the department of health. The department of labor and industries shall:

(1) Make ((~~other~~)) data necessary to conduct case investigations or epidemiological summaries available within two days of a request from the department.

(2) Execute a data sharing agreement with the department prior to implementation of this chapter.

WSR 10-20-156
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed October 6, 2010, 10:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-16-037.

Title of Rule and Other Identifying Information: Amending chapter 192-300 WAC, Registering for unemployment taxes; chapter 192-310 WAC, Reporting of wages and taxes due; chapter 192-320 WAC, Experience rating and benefit charging; chapter 192-330 WAC, Collections and refunds; chapter 192-340 WAC, Audits and technical assistance; and chapter 192-350 WAC, Transfer of business.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park Drive, Olympia, WA, on November 9, 2010, at 10:00 a.m.

Date of Intended Adoption: November 12, 2010.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 8, 2010.

Assistance for Persons with Disabilities: Contact Tammy Crawford by November 7, 2010, TTY (360) 902-9569 or (360) 902-9577.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 192-300-090 clarifies procedures for employers who become inactive or reactivate and how this impacts coverage of corporate officers. WAC 192-300-100 clarifies that the family exception for "corporate" farms also covers other legal entities. WAC 192-300-190 clarifies that business owners are not covered for unemployment insurance. WAC 192-310-010 adds a provision for domestic partners that was missed earlier and updates references to tax filing systems. WAC 192-310-020 is not a substantive change. WAC 192-310-025 updates the priority list for how payments are applied, including adding charges for NSF checks. WAC 192-310-025 adds a $25 charge for NSF checks. WAC 192-310-040 clarifies provisions for reporting on-call and standby hours. WAC 192-310-050 clarifies what records employers must keep, including specifying business and financial records. WAC 192-310-055 separates out current requirements for certain farm records. WAC 192-310-160 allows employers who become active thirty days to request exemption of corporate officers. WAC 192-310-190 clarifies percentage of ownership requirements for corporate officers who are unemployed. WAC 192-320-005 updates a statutory reference. WAC 192-320-065 is not a substantive change. WAC 192-320-070 adds a provision for domestic partners that was missed earlier and conforms domestic violence and apprenticeship provisions with statute. WAC 192-320-085 specifies the quarter when an overpayment of benefits is credited. WAC 192-330-110 updates a statutory reference. WAC 192-330-150 clarifies mailing dates to tribal governments. WAC 192-340-100 is not a substantive change. WAC 192-350-010 clarifies predecessor-successor provisions. WAC 192-350-070 modifies the application of rates in predecessor-successor transitions effective on January 1. WAC 192-350-090 clarifies when an employer quits for purposes of successor liability.

Reasons Supporting Proposal: These implement a comprehensive review and updating of unemployment insurance tax rules.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040.

Statute Being Implemented: Title 50 RCW.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Art Wang, 212 Maple Park Drive, Olympia, WA, (360) 902-9587; Implementation and Enforcement: Nan Thomas, 212 Maple Park Drive, Olympia, WA, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose more than minor costs on businesses, nor will there be a disproportionate impact on small business. Any

business costs associated with the rule are the result of underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 5, 2010
Paul Trause
Commissioner

NEW SECTION

WAC 192-300-090 When does an employer become inactive or reactivated for purposes of unemployment insurance and how does this affect coverage of corporate officers? (1) An employer that has no employees or covered corporate officers for eight consecutive quarters shall automatically be considered to be an inactive employer.

(2) An active employer may change to inactive status if the employer notifies the department that it is no longer an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage under RCW 50.24.160. The employer shall be considered inactive as of the effective date of the notice unless it is a corporation that has not exempted all its paid corporate officers. If the employer is a corporation and has not exempted all its paid corporate officers, it shall continue to be considered an active employer until the end of the calendar year. If it has no employees and has not elected coverage under RCW 50.24.160, the corporation shall no longer be considered an employer as of January 1st of the following calendar year.

Example A: Employer A (not a corporation) notifies the department that, as of June 30th, it no longer considers itself an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage for otherwise exempt workers. The department will notify Employer A that it is considered inactive and Employer A will not have to file reports for the quarter ending September 30th and beyond.

Example B: Employer Corporation B notifies the department that, as of June 30th, it no longer considers itself an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage for otherwise exempt workers. If the corporation is dissolving or is no longer in business or has exempted all its paid corporate officers from coverage, the department will notify it that the corporation is considered inactive and that it will not have to file reports for the quarter ending September 30th and beyond. If the corporation is continuing as a corporation in which all personal services are performed by bona fide corporate officers and has not exempted all its paid corporate officers, the corporation shall continue to be considered an active employer until December 31st and must report quarterly and pay taxes on nonexempt corporate officers. As of the following January 1st, it will no longer be considered an employer.

(3) A corporation in which all personal services are performed only by bona fide corporate officers, that has no employees throughout a calendar year, and that has not elected coverage for corporate officers under RCW 50.24.160 shall not be covered for corporate officers for that year regardless of whether it has notified the department that it is no longer an active employer.

Example C: Employer Corporation C is an active employer with employees in year 1 and must file quarterly reports. It has not elected coverage for corporate officers, but has not exempted them either, so Employer Corporation C must cover corporate officers in year 1. Throughout year 2, Employer Corporation C no longer has any employees and all personal services are performed by bona fide corporate officers, but fails to notify the department of the change. Employer Corporation C should submit quarterly "no payroll" reports. Because there are no employees in year 2, the corporate officers are no longer considered covered.

(4) An employer that had no employees and was not previously active in the calendar year and reactivates because it has employees or elects coverage under RCW 50.24.160 shall be considered an active employer as of the date it has employees or elects coverage. If the employer is a corporation, once it hires employees, it becomes an employer, so it must register and paid corporate officers become covered unless the corporation exempts them within thirty days. If the corporation does not exempt all of its paid corporate officers, the corporate officers that have not been exempted shall be reported and covered as of the date the employer became an active employer.

Example D: Employer D (not a corporation) had registered in a previous year with the department, but had no employees and was in inactive status as of January 1st. It hires employees for the first time that year on April 1st, notifies the department, and is restored to active status at that time. Employer D does not need to report to the department for the first quarter of the year because it was not an active employer at that time. Employer D must report and pay taxes beginning with the quarter ending June 30th.

Example E: Employer Corporation E is a corporation that had been an active employer in previous years, but had no employees and was in inactive status as of January 1st. Employer Corporation E did not previously exempt its corporate officers from coverage, nor did it elect coverage for the officers, but because it was inactive and had no employees, it does not need to report or pay taxes on the corporate officers for the first quarter of the year. Employer Corporation E hires employees for the first time that year on April 1st, notifies the department, is restored to active status at that time, and does not exempt its paid corporate officers within thirty days of April 1st. Employer Corporation E must report and pay taxes on both employees and on corporate officers beginning with the quarter ending June 30th.

(5) An employer that had been in active status during the calendar year, became inactive, and then returns to active status during the same calendar year shall be considered in active status for the entire time since it first became active in that calendar year. If the employer is a corporation that has not exempted all of its paid corporate officers, the corporate officers that have not been exempted shall be reported and covered for the entire time since the corporation first became active in that calendar year.

Example F: Employer F changed from active status to inactive status and back to active status within the same cal-

endar year. Employer F will be treated as if it had been in active status for the entire time since it first became active that year.

AMENDATORY SECTION (Amending WSR 99-20-127, filed 10/6/99, effective 11/6/99)

WAC 192-300-100 Does the exception from "employment" for immediate family members ((~~of partners or corporate officers for~~)) apply to farms owned by corporations, limited liability companies (LLCs), or partnerships under RCW 50.04.150((~~.~~))? The exemption in RCW 50.04.150 for family members employed on "corporate farms" ((~~includes family membership of all legal entities~~)) applies regardless of the structure of the legal entity, including to a spouse or domestic partner or unmarried child under eighteen of a corporate officer, limited liability company (LLC) member, or partner operating the farm.

AMENDATORY SECTION (Amending WSR 00-05-067, filed 2/15/00, effective 3/17/00)

WAC 192-300-190 Are owners of entities ((~~are not~~)) covered for unemployment insurance purposes((~~.~~))? ((~~The owners of a business as~~)) Businesses identified in RCW 50.04.080 and 50.04.090 include business entities such as limited liability companies, limited liability partnerships, etc. There is no employer-employee relationship in the services provided to the business by the owners, as defined in RCW 50.04.100. Therefore, owners, such as "members" of a limited liability company, partners of a partnership, or owners of a sole proprietorship are not covered for unemployment insurance purposes.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-010 What reports are required from an employer? (RCW 50.12.070.) (1) **Master business application.**

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing.

(2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) **Quarterly tax and wage reports:**

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of employer account management services (EAMS), UI*Fast*Tax, UI*Web*Tax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-020 When are tax payments by employers due? (RCW 50.24.010.)((.)) (1) Taxes must be paid each quarter. Each quarterly payment must include the taxes owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which taxes are due. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the tax payment must be received or postmarked on the next business day.

(2) Tax payments are due immediately when an employer goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent. However, interest will not be added until the first day of the second month following the end of the calendar quarter for which the taxes are owed.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-310-025 ((Application of)) How are payments((.)) applied? (1) A payment received with a tax report will be applied to the quarter for which the report is filed. A payment exceeding the legal fees, penalties, interests and taxes due for that quarter will be applied to any other debt as provided in subsection (2). If no debt exists, a credit statement will be issued for any overpayments.

(2) If a payment is received ((without)) separately from a tax report, the payment will be applied in the following order of priority((:)). It will first be applied to the current quarter if a balance is owed for that quarter, then to the previous quarter if a balance is owed for that quarter, then beginning with the oldest quarter in which a balance is owed:

(a) Costs of audit and collection((:));

(b) Penalties for willful misrepresentation of payroll((:));

(c) Lien fees((:));

(d) Warrant fees((:)), surcharges, and fees for nonsufficient funds (NSF) on checks;

(e) Penalties for knowingly failing to register with the department;

(f) Penalties for late tax reports ((penalty.));

(((f))) (g) Penalties for incomplete reporting ((or));

(h) Penalties for reporting using incorrect format((:));

(((g))) (i) Penalties for failure to maintain records (RCW 50.12.070(3)) or other penalties not otherwise specified here;

(j) Penalties for late tax payments ((penalty.));

(((h))) (k) Interest charges((:)); and

(((i))) (l) Tax payments.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or

(ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) One employee and reports incomplete wage elements for the one employee; or

(ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or

(iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or

(iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of $250.00, but not less than:

(i)	2nd occurrence	$75.00
(ii)	3rd occurrence	$150.00
(iii)	4th and subsequent occurrences	$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	$75.00
(ii)	3rd occurrence	$150.00
(iii)	4th and subsequent occurrences	$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of $25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or $10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or $10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or $10.00, whichever is greater.

(6) **Nonsufficient funds (NSF).** The department shall charge $25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules; ((~~and~~))

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially registered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

((~~(7)~~)) (8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or

reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(((~~(8)~~))) (9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(((~~(9)~~))) (10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(((~~(10)~~))) (11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-040 ((~~Employer reports—Further defining~~)) How should employers report hours worked? (RCW 50.12.070.)((~~-~~)) This section defines the hours that employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

(2) **Sick leave pay.** As provided in RCW 50.04.330(1), any payments made to an employee under a qualified plan for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

(3) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee for forty hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated by the employer for the amount of wages they would have earned during the notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular forty-hour week, report the actual number of hours worked. If there are no reliable time keeping records, report forty hours for each week in which a full-time salaried employee worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least fifteen classroom or laboratory hours to be considered full-time. A teaching load of less than fifteen hours of instruction is considered part-time.

(a) If there is no reliable hourly information, report the hours of instruction as part-time based on fifteen credits as a full-time teaching load and thirty-five hours as full-time employment for a week. For example, an instructor teaches twelve credits per week. Twelve divided by fifteen equals eighty percent. Thirty-five hours times eighty percent equals twenty-eight hours. The employer should report the twenty-eight hours to the department on the employer's quarterly tax and wage report.

(b) Any part-time salaried instructor who does not establish a valid claim because of this formula may provide the department with evidence of hours worked that exceeds the hours reported by the employer.

(8) **Severance pay.** Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(12) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

(13) **On-call and standby hours.** Do not report hours if an employee is paid for a shift of on-call or standby hours in which the employee was not actually called in and did not perform services. If the employee was called in or performed services, report the hours actually worked. If the employer has no records of the number of hours actually worked, report the duration of the shift up to eight hours per day.

AMENDATORY SECTION (Amending WSR 00-01-164, filed 12/21/99, effective 1/21/00)

WAC 192-310-050 ((~~Employer~~)) What records((~~.~~)) must every employer keep? (RCW 50.12.070.) The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

((~~a.~~)) (a) The name of each worker;

((~~b.~~)) (b) The Social Security number of each worker;

((~~c.~~)) (c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;

((~~d.~~)) (d) The basis upon which wages and/or remuneration are paid to each worker;

(e) The location where such services were performed;

((~~f.~~)) (f) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;

((~~g.~~)) (g) The workers' total gross pay period earnings;

((~~h.~~)) (h) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and

((~~i.~~)) (i) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) **Business, financial records, and record retention.** Every employer shall make, keep, and preserve business and financial records containing the following information for four calendar years following the calendar year in which employment occurred:

(a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;

(b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;

(c) Quarterly reports to the employment security department and the department of labor and industries;

(d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and

(e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-310-055 ((~~Employer~~)) What additional records((—)) must farm operators or farm labor contractors((—)) keep? (RCW 50.04.155 and 50.12.070.) ((~~Every employer is required to keep true and accurate employment records.~~))

(1) Farm operators and farm labor contractors must keep the records required under WAC 192-310-050.

(2) Farm operators who contract with a crew leader or a farm labor contractor must keep original records containing the following information:

(a) The beginning and ending dates of the contract;

(b) The types of services performed;

(c) The number of persons performing such services;

(d) The name of the contractor or crew leader; and

(e) Evidence the farm labor contractor is licensed as required by chapter 19.30 RCW.

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made within thirty days of when the corporation first registers with the department as an employer under RCW 50.12.070 or within thirty days of when the corporation changes its status with the department from inactive to active employer. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all exempted officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife or a domestic partner, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses or domestic partners of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers exempted do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

(a) A corporate officer who owns ten percent or more ((~~of the outstanding stock~~)) of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more ((~~of the outstanding stock~~)) of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(c) Percentage ownership of the corporation may be measured by the percentage owned of outstanding stock or shares of the corporation.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership ((~~of the~~)) percentage of ((~~stock~~)) a corporate officer increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

WAC 192-320-005 What is "experience?"((—)) (RCW 50.29.021.) As used in this chapter, the term "experience" includes matters that have a direct relation to the risk of unemployment. Any benefits paid that are based on wages paid by the employer and chargeable under RCW ((~~50.29.020~~)) 50.29.021 are considered experience.

AMENDATORY SECTION (Amending WSR 10-16-038, filed 7/26/10, effective 8/26/10)

WAC 192-320-065 How does an employer request relief of benefit charges? (RCW 50.29.021.) For purposes of RCW 50.29.021, a contribution-paying ((~~nonlocal government~~)) base year employer may request relief from certain benefit charges which result from the payment of benefits to an individual. This section does not apply to local governments.

(1) **Employer added to a monetary determination as the result of a redetermination.** The employer's request for relief of benefit charges must be received or postmarked within thirty days of ((~~mailing~~)) when the department mails the notification of redetermination (Notice to Base Year Employer - EMS 166).

(2) **Timely response.** The commissioner may consider a request for relief of benefit charges that has not been received or postmarked within thirty days as timely if the employer establishes good cause for the untimely response.

(3) **Additional information.**

(a) The employer shall provide the information requested by the department within thirty days of the mailing date of the department's request.

(b) It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to make a determination of relief of benefits charges, or good cause for failure to respond in a timely manner.

(c) Failure to respond within thirty days will result in a denial of the employer's request for relief of benefit charges unless the employer establishes good cause for the untimely response.

(4) **Denial and appeal of request.** Any denial of a request for relief of benefit charges shall be in writing ((~~and will be the basis of appeal pursuant to~~)). The denial may be appealed under RCW 50.32.050.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-320-070 What conditions apply for relief of benefit charges due to a voluntary quit? (RCW 50.29.-021.) (1) A contribution-paying ((~~nonlocal government~~)) base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065. This section does not apply to local governments.

(2) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's or domestic partner's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same; or the job location may have changed but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) ((~~Domestic violence which causes the claimant reasonably to believe that continued employment would jeopardize the safety of~~)) Separation necessary to protect the claimant or any member of the claimant's immediate family from domestic violence or stalking; and

(j) Entry into an apprenticeship program approved by the Washington state apprenticeship training council.

(3) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) Other work-related factors the commissioner considers pertinent.

AMENDATORY SECTION (Amending WSR 10-16-038, filed 7/26/10, effective 8/26/10)

WAC 192-320-085 When is an overpayment of benefits((—~~Credit~~)) credited to an employer's account((~~,~~))? Benefits paid shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. ((~~Such ultimate~~)) Reversal or modification shall not affect previous benefit charges ((~~based thereon~~)) ultimately modified or reversed; however, benefit credits in an amount equal to the erroneous charges shall be applied to the employer's account for the quarter in the calendar year in which the decision is ultimately modified or reversed.

AMENDATORY SECTION (Amending WSR 03-22-032, filed 10/28/03, effective 11/28/03)

WAC 192-330-110 ((~~Delinquencies.~~)) What tax rate is assigned to a delinquent employer who becomes a contribution-paying employer? RCW 50.29.025 ((~~(1)(f)(i) and (2)(e)(i)~~)) specifies the tax rate that shall be charged to employers who have failed to pay their contributions and who are not in compliance with a deferred payment contract. The tax rate established by that section shall also be assigned to a reimbursable employer (one who makes payments in lieu of contributions) who is delinquent in its payments and elects or is required to become a contribution-paying employer.

AMENDATORY SECTION (Amending WSR 03-22-032, filed 10/28/03, effective 11/28/03)

WAC 192-330-150 How may the option to make payments in lieu of contributions be revoked for tribes and tribal entities((—))? (RCW 50.50.040.) (1) In any revocation action, the department will treat the entire tribe as a single entity. If any tribal entity or unit becomes delinquent, the entire tribe will be treated as delinquent. If any entity of the tribe is a contribution-paying employer and is delinquent, the entire tribe will be treated as a contribution-paying employer and will be subject to revocation of coverage.

(2) The ninety day response period in RCW 50.50.040 (1)(a) and the one hundred eighty day response period((~~s~~)) in RCW 50.50.040 (2)(a) begin with the date the tax statement is received, which is deemed to be three days after it is mailed to the employer by the department.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-340-100 What reasonable audit expenses((—)) may the department charge if an employer

knowingly misrepresents payroll? (RCW 50.12.220 (((~~(1)(b).~~)) (3).) If an employer knowingly misrepresents its payroll to the department, it shall be liable for the reasonable expenses ((~~for~~)) of auditing ((~~an employer's~~)) its books and collecting taxes. These may include:

(1) Salaries and benefits based on the payrolls documented for state staff conducting the audit (including reporting and follow-up costs);

(2) Communication costs such as telephone charges for arranging the audit, e-mails, mail or similar communication services;

(3) Travel costs for expenses such as transportation, lodging, subsistence and related items incurred by state employees traveling for the purpose of conducting the audit. Such costs may be charged on an actual cost basis or on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed by the department;

(4) Customary standard commercial airfare costs (coach or equivalent);

(5) Costs for materials and supplies (including the costs of producing reports and audit findings);

(6) Equipment costs necessary for conducting the audit;

(7) Collection costs, including court costs, lien and warrant fees, and related costs; and

(8) Other costs which the department establishes that are directly related to the audit or collection of the penalty (((~~i.e.~~)) e.g., appeal costs).

AMENDATORY SECTION (Amending WSR 07-23-131, filed 11/21/07, effective 1/1/08)

WAC 192-350-010 What is a predecessor-successor relationship? (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets, including but not limited to the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. Whether or not a predecessor-successor relationship (including a "partial predecessor" or "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor," including a "full predecessor" or "partial predecessor," if, during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

(b) A separate unit or branch of its trade or business.

(4) **Successor.** A "successor" may be either a "full successor" or a "partial successor." An employer may be a "full successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

(b) A separate unit or branch of a predecessor employer's trade or business.

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (9) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Factors.** Factors should be weighed instead of merely adding up the number of individual factors. No single factor is necessarily conclusive((~~, but~~)). Some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "full successor" or "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

(9) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by the predecessor, successor, or a combination of both.

(10) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

AMENDATORY SECTION (Amending WSR 07-23-131, filed 11/21/07, effective 1/1/08)

WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates? (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B). However, if the predecessor terminates business on December 31st of any year and the successor begins business on January 1st of the next year, the department will calculate tax rates as if the transfer occurred on January 1st. Therefore, the department will assign a tax rate to the predecessor for January 1st and that rate will transfer to the successor.

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 (3)(b).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

NEW SECTION

WAC 192-350-090 When does an employer quit or dispose of a business for purposes of successor liability? (RCW 50.24.210.) For purposes of RCW 50.24.210, an employer is considered to have quit business or disposed of its business or stock of goods if it disposes of substantially all of its operating assets. An employer is also considered to have quit business or disposed of its business or stock of goods if it transfers operating assets and retains only assets that do not have substantial net value or that are lower in value than total unemployment taxes, penalties, and interest owed. If an employer quits business or disposes of its business or stock of goods and has more than one successor, all successors are jointly and severally liable for any unemployment taxes due unless the employer and all successors have notified the department in writing and the department has approved apportioning any unemployment tax liability between the successors.

WSR 10-20-157
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed October 6, 2010, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-16-036.

Title of Rule and Other Identifying Information: Amending WAC 192-320-035 and adopting new WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports (through rate year 2010/beginning in rate year 2011)?

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park Drive, Olympia, WA, on November 9, 2010, at 10:30 a.m.

Date of Intended Adoption: November 12, 2010.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 8, 2010.

Assistance for Persons with Disabilities: Contact Tammy Crawford by November 7, 2010, TTY (360) 902-9569 or (360) 902-9577.

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

tion 1, chapter 72, Laws of 2010 (SSB 6524), by limiting WAC 192-320-035 through rate year 2010 and adopting WAC 192-320-036 for rate years beginning in 2011. The new WAC implements the law restructuring the unemployment insurance tax rate for employers who are delinquent in paying their taxes and filing reports.

Reasons Supporting Proposal: The rule alters the formula for calculating unemployment insurance tax rates for delinquent employers consistent with SSB 6524.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040.

Statute Being Implemented: RCW 50.29.025.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Art Wang, 212 Maple Park Drive, Olympia, WA, (360) 902-9587; Implementation and Enforcement: Nan Thomas, 212 Maple Park Drive, Olympia, WA, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose more than minor costs on businesses, nor will there be a disproportionate impact on small business. Any business costs associated with the rule are the result of the underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 5, 2010
Paul Trause
Commissioner

AMENDATORY SECTION (Amending WSR 09-24-009, filed 11/20/09, effective 12/21/09)

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports through rate year 2010? For rate years through 2010:

(1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

NEW SECTION

WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011? (1) An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) The commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

The limitations in (b) of this subsection do not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30th and no reasonable alternative personnel were available and any amounts due are paid no later than December 31st of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5)(a) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it shall be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department shall use the higher of the rate calculated under RCW 50.29.025 (2)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection shall not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the agency, the additional rate shall be one-half percent less than it would otherwise have been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40. The tax rate caps for "qualified employers" in RCW 50.29.025 shall not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" shall be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

WSR 10-20-158
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Physical Therapy)

[Filed October 6, 2010, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-002.

Title of Rule and Other Identifying Information: Chapter 246-915 WAC, amending the chapter to consider the use of telehealth in the practice of physical therapy.

Hearing Location(s): Department of Health, Town Center Two, 111 Israel Road S.E., Room 158, Tumwater, WA 98501, on November 17, 2010, at 10:15 a.m.

Date of Intended Adoption: November 17, 2010.

Submit Written Comments to: Kris Waidely, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by November 3, 2010.

Assistance for Persons with Disabilities: Contact Kris Waidely by November 3, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Telehealth is within the physical therapy scope of practice. The board of physical therapy (board) developed rules so practitioners are able to clearly tell that telehealth is within their scope of practice. The proposed rule provides the requirements in rule for appropriate physical therapy care via telehealth. The proposed rule provides an alternative way by which a therapist may determine a diagnosis, prognosis, plan of therapeutic intervention, and to assess and document the ongoing effects of intervention.

Reasons Supporting Proposal: The law gives the board authority to adopt rules regarding the standard of practice for physical therapy in Washington state. The proposed rules clarify that telehealth is within the scope of practice for physical therapists and physical therapist assistants when performed under the same standard of care requirements that exist when treating a patient in person.

Statutory Authority for Adoption: RCW 18.74.023 and 18.74.025.

Statute Being Implemented: RCW 18.74.023 and 18.74.025.

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

Name of Proponent: Department of Health, Board of Physical Therapy, P.O. Box 47852, Olympia, WA 98504-7852, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, Program

Manager, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a) exempts rules that, by definition, are not significant legislative rules. By definition this rule qualifies under RCW 34.05.328 (5)(c)(ii) as an "interpretative rule."

October 6, 2010
Lisa A. Hodgson
Executive Director

NEW SECTION

WAC 246-915-187 Use of telehealth in the practice of physical therapy. (1) Licensed physical therapists and physical therapist assistants may provide physical therapy via telehealth following all requirements for standard of care, including those defined in chapters 18.74 RCW and 246-915 WAC.

(2) The physical therapist or physical therapist assistant must identify in the clinical record that the physical therapy occurred via telehealth.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) Telehealth means providing physical therapy via electronic communication where the physical therapist or physical therapist assistant and the patient are not at the same physical location.

(b) Electronic communication means the use of interactive, secure multimedia equipment that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the physical therapist or the physical therapist assistant and the patient.

WSR 10-20-159
PROPOSED RULES
OLYMPIC COLLEGE

[Filed October 6, 2010, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-037.

Title of Rule and Other Identifying Information: First amendment activities policy.

Hearing Location(s): Olympic College Board Room, College Service Center, 5th Floor, 1600 Chester Avenue, Bremerton, WA 98337, on November 12, 2010, at 10:00 a.m.

Date of Intended Adoption: November 12, 2010.

Submit Written Comments to: Thomas Oliver, Olympic College, CSC 210, 1600 Chester Avenue, Bremerton, WA 98337, e-mail toliver@olympic.edu, fax (360) 475-7505, by October 15, 2010.

Assistance for Persons with Disabilities: Contact access services by October 29, 2010, TTY (360) 475-7543 or (360) 475-7540.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new policy updates and clarifies activities that are acceptable on Olympic College campuses and are protected under the first amendment of the United States constitution.

Reasons Supporting Proposal: Recent activities on campus have highlighted the need for a clear and concise policy on first amendment.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

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

Name of Proponent: Linda Yerger, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kim McNamara, HSS 2, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7535.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact on any entity other than Olympic College.

A cost-benefit analysis is not required under RCW 34.05.328. There is no significant economic impact.

October 6, 2010
Thomas Oliver
Rules Coordinator

NEW SECTION

WAC 132C-10-009 First amendment activities. (1) **Purpose.** Olympic College recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

The purpose of this policy is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It establishes time, place and manner regulations intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

(2) **Definitions.**

(a) **Noncollege groups:** For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Olympic College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

(b) **College groups:** For the purposes of this policy college groups shall mean individuals, or combinations of individuals, who are currently enrolled students or current employees of Olympic College or who are affiliated with a

recognized student organization or a recognized employee group of the college.

(c) **First amendment activities:** For the purposes of this policy first amendment activities (hereinafter "the event") would include, but not necessarily be limited to: Informational picketing, petition circulation, distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints.

(d) **Limited public forum:** For the purposes of this policy a limited public forum is identified by the college as a location where noncollege groups or individuals may exercise their first amendment rights through expressive activity.

(3) **Policy.** Olympic College is an educational institution provided and maintained for and by the people of the state of Washington. However, the public character of the college does not grant to individuals or groups an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities and business of the college.

The college's buildings, facilities, and grounds are not available for unrestricted use by either college groups or noncollege groups. College groups will be given priority except when advance booking and payment by a noncollege group is accepted by the college.

Materials which are commercial, obscene, or unlawful in character are prohibited.

(4) **Commercial events.** Activities and events of a commercial nature by college groups are not covered by the first amendment policy. See chapter 42.52 RCW.

(5) **Criminal trespass.** Any person determined to be violating this policy is subject to an order from the college safety and security department to leave the college campus. Persons failing to comply with such an order are subject to arrest for criminal trespass.

WSR 10-20-162
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 6, 2010, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-116.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on November 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 9, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 26, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to reduce the maximum diversion cash assistance benefits from $1500 to $1250. The proposal is necessary to reduce program costs in response to a budget shortfall. The proposal will impact clients who are requesting emergency assistance benefits by limiting the maximum allotment.

Reasons Supporting Proposal: The proposed amendments are necessary for the program to contain costs and ensure the program's fiscal stability.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.210(4).

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kerry Judge, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4630.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed rule reduces the annual benefit limit of diversion cash assistance to TANF/SFA eligible clients in response to budget reductions.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed rule reduces diversion cash assistance availability from $1500 to $1250 in a twelve-month period.

September 30, 2010

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-066, filed 1/12/01, effective 3/1/01)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? DSHS has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA) except:

(i) You do not have to participate in WorkFirst requirements as defined in chapter 388-310 WAC; and

(ii) You do not have to assign child support rights or cooperate with division of child support as defined in chapter 388-422 WAC.

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need exists; and

(d) Have or expect to get enough income or resources to support yourselves for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps; or

(f) Medical costs, except when an adult member of your family is not eligible because of failure to provide third party liability (TPL) information as defined in WAC 388-505-0540.

(3) DCA payments are limited to:

(a) One thousand ((~~five hundred~~)) two hundred fifty dollars once in a twelve-month period which starts with the month the DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) DCA payments can be paid:

(a) All at once; or

(b) As separate payments over a thirty-day period. The thirty-day period starts with the date of your first DCA payment.

(6) When it is possible, we pay your DCA benefit directly to the service provider.

(7) You are not eligible for DCA if:

(a) Any adult member of your assistance unit got DCA within the last twelve months;

(b) Any adult member of your assistance unit gets TANF/SFA;

(c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit is receiving SSI; or

(d) Your assistance unit does not have a needy adult (such as when you do not receive TANF/SFA payment for yourself but receive it for the children only).

(8) If you apply for DCA after your TANF/SFA grant has been terminated, we consider you an applicant for DCA.

(9) If you apply for TANF/SFA and you received DCA less than twelve months ago:

(a) We set up a DCA loan.

(i) The amount of the loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period.

(ii) The first month begins with the month DCA benefits began.

(b) We collect the loan only by reducing your grant. We take five percent of your TANF/SFA grant each month.

(10) If you stop getting TANF/SFA before you have repaid the loan, we stop collecting the loan unless you get back on TANF/SFA.

WSR 10-20-163
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 6, 2010, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-161.

Title of Rule and Other Identifying Information: The department is proposing changes to WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance, 388-484-0006 TANF/SFA time limit extensions, 388-484-0010 How does the five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance apply to American Indians or Alaskan Natives living in Indian country?, and 388-310-0350 WorkFirst—Other exemptions from mandatory participation.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on November 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 9, 2010,

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 26, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules conform state Indian country disregard standards to current federal law standards; clarify who is exempt from participation requirements; and redefine the eligibility criteria for a hardship TANF/SFA time limit extension.

The proposed rules provide time limit extensions to clients who continue to meet TANF/SFA eligibility requirements; have reached the sixty-month time limit; and are exempt from participation requirements because they are (1) an older caretaker relative; (2) an adult with a severe and chronic disability; (3) required to be in the home to care for a child with special needs; or (4) required to be in the home to care for a disabled adult relative. The proposed rules also

provide time limit extensions to clients who continue to meet TANF/SFA eligibility requirements; have reached the sixty-month time limit; and (1) have an open child welfare case and a dependent child under Title 13 RCW for the first time; (2) are working in unsubsidized employment for at least thirty-two hours per week; or (3) document that he/she meets family violence criteria and is participating in activities needed to address the client's family violence issues.

Reasons Supporting Proposal: The proposed rules that redefine the eligibility criteria for a hardship TANF/SFA time limit extension are needed to reduce program costs in response to a budget shortfall. The department expects that some clients who are currently receiving a hardship TANF/SFA time limit extension will no longer be eligible and will be terminated from the program. The proposed rules that clarify exemption from participation criteria will likely have no impact on clients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Rule is necessary because of federal law, [no further information provided by agency].

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy Jsames, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4648.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed amendment streamlines the sanction process in response to a budget shortfall.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed rule modifies the TANF/SFA time limit rules in response to a budget shortfall.

September 30, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-079, filed 7/31/09, effective 9/1/09)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) **When am I exempt from mandatory participation?**

You are exempt from mandatory participation if you are:

(a) ((~~An older needy~~)) A caretaker relative as defined by WAC 388-484-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below and:

(i) ((~~The~~)) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan; and/or

(ii) Your disability ((~~must be~~)) is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months; ((~~or~~)) and

(((~~ii) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are applying for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability); and~~))

(iii) Your disability and ability to participate is verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), and/or regional support network (RSN), or evidence from another medical or mental health professional; and

(iv) Your SSI application status may be verified through the SSI facilitator and/or state data exchange.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, physician, mental health provider, school professional, other medical professional, HCS, MHD, and/or a RSN to require specialized care or treatment that ((~~significantly interferes with your ability to look for work or work~~)) prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, and/or a RSN, or evidence from another medical or mental health professional.

(2) **Who reviews and approves an exemption from participation?**

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals

and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(3) **Can I participate in WorkFirst while I am exempt?**

(a) You may choose to participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(4) **Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?**

((~~An exemption from participation does not affect your sixty-month time limit (described in WAC 388-484-0005) for receiving TANF/SFA benefits.~~)) Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

(5) **How long will my exemption last?**

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(6) **What happens when I am no longer exempt?**

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(7) For time-limited extensions, see WAC 388-484-0006.

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) **What is the sixty-month time limit?**

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or medicaid.

(2) **When did the sixty-month time limit go into effect?**

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

(3) **Does the time limit apply to me?**

The sixty-month time limit applies to you for any month in which you are a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(4) **Do any exceptions to the time limits apply to me?**

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) An adult caretaker, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An ((~~American Indian or Native Alaskan~~)) adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan Native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

(5) **What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?**

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless you qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.

(6) **What can I do if I disagree with how the department has counted my months of cash assistance?**

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ninety days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all sixty months of benefits according to our records; and

(ii) You ask for a hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

(7) **Does the department ever change the number of months that count against my time limit?**

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at ((~~a fair~~)) an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) **What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) **Who is eligible for a hardship TANF/SFA time limit extension?**

Effective February 1, 2011, you are eligible for a hardship TANF/SFA time limit extension if you are on TANF or otherwise eligible for TANF, have received sixty cumulative months of TANF and:

(a) You ((~~qualify for one of the exemptions listed in~~)) are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (a) through (d); or

(b) You:

(i) ((~~Are participating satisfactorily in the WorkFirst program (see chapter 388-310 WAC for a description of WorkFirst participation requirements)~~)) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 or a ward of a tribal court; or

(ii) Are working in unsubsidized employment for thirty-two hours or more per week; or

(iii) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating ((~~satisfactorily in specialized activities listed in your individual responsibility plan~~)) in activities needed to address your family violence according to a service plan developed by a person trained in family violence.

(((~~(c) You have a temporary situation that prevents you from working or looking for a job. (For example, you may be unable to look for a job while you have health problems or if you are dealing with family violence.) You will receive a time-limited extension if you are participating in activities included in your individual responsibility plan to help your situation.~~

~~(d) You are in sanction, but you will be subject to the sanction rules described in WAC 388-310-1600.~~))

(3) **Who reviews and approves ((~~an~~)) a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine ((~~which~~)) whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit.

(c) Before you reach your time limit, the department will send you a notice that tells you whether ((~~your~~)) a hardship time limit extension ((~~was~~)) will be approved when your time limit expires and how to request ((~~a fair~~)) an administrative hearing if you disagree with the decision.

(4) **Do my WorkFirst participation requirements change if I receive a hardship TANF/SFA time limit extension?**

(a) ((~~Your participation requirements do not change~~)) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) **Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) ((~~**What happens if I stop participating in WorkFirst activities as required during a TANF/SFA time limit extension?**~~

~~If you do not participate in the WorkFirst activities required in your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600(4), the department will follow the sanction rules in WAC 388-310-1600.~~

~~(7)~~)) **How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months((~~;~~

~~(iii) If you are extended under WAC 388-484-0006 (2)(c) or (d) then we will review your extension at least every twelve months~~)).

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and ((~~change the type of TANF/SFA time limit extension~~)) determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

AMENDATORY SECTION (Amending WSR 01-04-016, filed 1/26/01, effective 2/1/01)

WAC 388-484-0010 How does the five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance apply to ((~~American Indians or Alaskan Natives~~)) adults living in Indian country? (1) **If you are ((~~American Indian or Alaskan Native~~)) an adult living in Indian country, ((~~time limits on~~)) months of temporary assistance for needy families (TANF), state family assistance (SFA) and general assistance for pregnant women (from May 1, 1999 to July 31, 1999) do not count towards the time limit under certain circumstances.**

((~~If you are an American Indian or Alaskan Native parent or other relative as defined by WAC 388-454-0010,~~)) Months of cash assistance received do not count against the sixty-month lifetime limit ((~~if~~)) while you ((~~live~~)) are an adult living in Indian country or an Alaskan Native village where at least fifty percent of ((~~Indian~~)) adults are not employed.

(2) ((~~**Do time limits on cash assistance apply if I am not an American Indian or Alaskan Native but I am the parent or other relative of an American Indian or Alaskan Native child?**~~

~~If you are a non-American Indian or non-Alaskan Native parent or other relative, as defined by WAC 388-454-0010, of an American Indian or Alaskan Native child or children living in a qualifying area of Indian country, your months on assistance will count against your lifetime limit. You may, however, receive more than sixty months of assistance under hardship criteria to be developed by the department.~~

~~(3)~~)) **Where must I live to qualify for the Indian country exemption to time limits?**

To qualify for this exemption to TANF time limits, you must live in "Indian country." The department uses the "Indian country" definition in federal law at 18 U.S.C. 1151. Indian country is defined as reservations, dependent Indian communities, and allotments. Dependent Indian communities must be set aside by the federal government for the use of Indians and be under federal superintendence. Near reservation areas (areas or communities adjacent or contiguous to reservations) are not considered Indian country for purposes of this exemption.

(((~~4) **Can I live on the reservation or Indian country belonging to a tribe other than my own to qualify for this time limit exemption?**~~

~~Yes. You do not need to be an American Indian or Alaskan Native of the same tribe as the reservation or other area of Indian country on which you reside.~~

~~(5)~~)) (3) **How does the department determine if at least fifty percent of adults living in Indian country are not employed?**

The department uses the most current biennial *Indian Service Population and Labor Force Estimates Report* published by the Bureau of Indian Affairs (BIA), or any successor report, as the default data source to determine if the not employed rates for areas of Indian country are at least fifty percent.

(((~~6)~~)) (4) **What if a tribe disagrees with the not employed rate published in the BIA Indian Service Population and Labor Force Estimates Report?**

A tribe may provide alternative data, based on similar periods to the *Indian Service Population and Labor Force Estimates Report*, to demonstrate that the not employed rate is at least fifty percent.

WSR 10-20-164
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 6, 2010, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-115.

Title of Rule and Other Identifying Information: The department is proposing changes to WAC 388-310-1600 WorkFirst—Sanctions.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.

html or by calling (360) 664-6094), on November 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 9, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 26, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to reduce program costs by eliminating the sanction review panel in response to a budget shortfall. The process will continue to include a case review by someone other than the assigned caseworker. This is an administrative procedural change and it is not expected to impact clients.

Reasons Supporting Proposal: These changes are necessary for the program to stay within budget.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stephanie Nielsen, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4699.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed amendment streamlines the sanction process in response to a budget shortfall.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed rule streamlines the sanction process in response to a budget shortfall.

September 30, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-12-044, filed 5/26/10, effective 7/1/10)

WAC 388-310-1600 WorkFirst—Sanctions. Effective July 1, 2010.

(1) **What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) **What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance sanction case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance sanction case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance sanction case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

(3) **What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) **What happens in my noncompliance sanction case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) What happens if you are sanctioned and stay in sanction;

(ii) How you can participate and get out of sanction;

(iii) How you and your family benefit when you participate in WorkFirst activities;

(iv) That if you continue to refuse to participate, without good cause, ((~~a sanction review panel may review~~)) your case((~~, and decide to close your case~~)) may be closed after you have been in sanction status for four months in a row;

(v) How you plan to care for and support your children if ((~~a sanction review panel closed~~)) your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vi) How to reapply if ((~~a sanction review panel closes~~)) your case is closed.

(b) If you do not come to your noncompliance sanction case staffing, we will make a decision based on the information we have.

(5) **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisor will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisor approves the sanction, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request a fair hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if ((~~a sanction review panel closes~~)) your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(6) **What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

(7) **Are there penalties when you or someone in your household goes into sanction status?**

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements.

(b) Your grant is reduced by one person's share or forty percent, whichever is more.

(8) **How do I end the penalties and get out of sanction status?**

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days).

(c) When you leave sanction status, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(9) **What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

If your case closes while you are in sanction status and is reopened, you will start out where you left off in sanction.

That is, if you were in month two of sanction when your case closed, you will be in month three of sanction when you are approved for TANF or SFA.

(10) **What happens if I stay in sanction status?**

(a) We will send information to a ((~~sanction review panel~~)) supervisor or designee with a recommendation to close your case.

(b) ((~~The sanction review panel~~)) A supervisor or designee will ((~~review your case and~~)) make the final decision.

(c) If ((~~the sanction review panel~~)) the supervisor or designee approves case closure, your case will be closed after you have been in sanction for four months in a row.

(11) ((~~**What is a sanction review panel?**~~

~~(a) A sanction review panel is a small group of people who are independent of your local community services office and do a thorough, objective review of your sanction.~~

~~(b) The sanction review panel makes the final decision about whether to close your case after receiving a recommen-~~

~~dation from your case manager and reviewing your case to make sure the original sanction was appropriate and we made attempts to reengage you in the program.~~

~~(12)~~)) **What happens when a ((~~sanction review panel decides to close~~)) supervisor or designee approves closure of my case?**

When a ((~~sanction review panel decides to close~~)) supervisor or designee approves closure of your case, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How to request a fair hearing if you disagree with this decision;

(d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (((~~13~~))) (12).

(((~~13~~))) (12) **What if I reapply for TANF or SFA after a ((~~sanction review panel closed~~)) supervisor or designee approved case closure and my case was closed?**

If a ((~~sanction review panel closes~~)) supervisor or designee approves case closure and we close your case, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

WSR 10-20-166
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed October 6, 2010, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-128.

Title of Rule and Other Identifying Information: WAC 388-531-1550 Sterilization physician-related services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on November 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 9, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 26, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is revising this section to include (1) coverage criteria for hysteroscopic sterilizations; and (2) requirements for who can perform and be paid for this procedure.

Reasons Supporting Proposal: These proposed rules further expand the client's "choice" for managing their method of contraception by allowing for a safe, effective, and cost-effective alternative to laparoscopic tubal ligations for permanent sterilization. Whereas a laparoscopic tubal ligation requires surgical entry via the abdomen, the hysteroscopic sterilization is not performed in this manner and can be performed in a physician's office and, in most cases, without the use of general anesthesia.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Ellen Silverman, P.O. Box 45510, Olympia, WA 98504-5506, (360) 725-1570.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and determined that there are no new costs associated with these changes and they do not impose disproportionate costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ellen Silverman, Clinical Utilization Management Supervisor, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1570, fax (360) 586-9727, e-mail Ellen.silverman@dshs.wa.gov.

September 27, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1550 Sterilization physician-related services. (1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing. A hysterectomy is a surgical procedure or operation for the purpose of removing the uterus. Hysterectomy results in sterilization, but ((~~MAA~~)) the department does not cover hysterectomy performed solely for that purpose. Both hysterectomy and sterilization procedures require the use of specific consent forms. See subsections (10), (11) and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.

STERILIZATION

(2) ((~~MAA~~)) The department covers sterilization when all of the following apply:

(a) The client is at least eighteen years of age at the time consent is signed;

(b) The client is a mentally competent individual;

(c) The client has voluntarily given **informed consent** in accordance with all the requirements defined in this subsection; and

(d) At least thirty days, but not more than one hundred eighty days, have passed between the date the client gave informed consent and the date of the sterilization.

(3) ((~~MAA~~)) The department does not require the thirty-day waiting period, but does require at least a seventy-two hour waiting period, for sterilization in the following circumstances:

(a) At the time of premature delivery, the client gave consent at least thirty days before the expected date of delivery. The expected date of delivery must be documented on the consent form;

(b) For emergency abdominal surgery, the nature of the emergency must be described on the consent form.

(4) ((~~MAA~~)) The department waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery, and completes a sterilization consent form. One of the following circumstances must apply:

(a) The client became eligible for **medical assistance** during the last month of pregnancy;

(b) The client did not obtain medical care until the last month of pregnancy; or

(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.

(5) ((~~MAA~~)) The department does not accept informed consent obtained when the client is in any of the following conditions:

(a) In labor or childbirth;

(b) Seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances that affect the client's state of awareness.

(6) ((~~MAA~~)) The department has certain consent requirements that the provider must meet before ((~~MAA~~)) the department reimburses sterilization of a **mentally incompetent** or institutionalized client. ((~~MAA~~)) The department requires both of the following:

(a) A court order; and

(b) A sterilization consent form signed by the legal guardian, sent to ((~~MAA~~)) the department at least thirty days prior to the procedure.

(7) ((~~MAA~~)) The department reimburses epidural anesthesia in excess of the six-hour limit for sterilization procedures that are performed in conjunction with or immediately following a delivery. ((~~MAA~~)) The provider cannot bill separately for BAUs for the sterilization procedure. The department determines total billable units by:

(a) Adding the time for the sterilization procedure to the time for the delivery; and

(b) Determining the total billable units by adding together the delivery BAUs, the delivery time, and the sterilization time.

(((~~(c) The provider cannot bill separately for the BAUs for the sterilization procedure.~~)))

(8) The physician identified in the "consent to sterilization" section of the DSHS-approved sterilization consent form must be the same physician who completes the "physician's statement" section and performs the sterilization procedure. If a different physician performs the sterilization procedure, the client must sign and date a new consent form at the time of the procedure that indicates the name of the physician performing the operation under the "consent for sterilization" section. This modified consent must be attached to the original consent form when the provider bills ((~~MAA~~)) the department.

(9) ((~~MAA~~)) The department reimburses all attending providers for the sterilization procedure only when the provider submits an appropriate, completed DSHS-approved consent form with the claim for reimbursement. ((~~MAA~~)) The department reimburses after the procedure is completed.

HYSTEROSCOPIC STERILIZATIONS

(10) The department pays for hysteroscopic sterilizations when the following criteria are met:

(a) A department-approved device is used;

(b) The procedure is predominately performed in a clinical setting such as a physician's office, without general anesthesia and without the use of a surgical suite; and is covered according to the corresponding department fee schedule;

(c) The client provides informed consent for the procedure in accordance with this section; and

(d) The hysteroscopic sterilization is performed by a department-approved provider who:

(i) Has a core provider agreement with the department;

(ii) Is nationally board certified in obstetrics and gynecology (OB-GYN);

(iii) Is privileged at a licensed hospital to do hysteroscopies;

(iv) Has successfully completed the manufacturer's training for the device;

(v) Has successfully performed a minimum of twenty hysteroscopies; and

(vi) Has established screening and follow-up protocols for clients being considered for hysteroscopic sterilization.

(12) To become a department-approved provider for hysteroscopic sterilizations, interested providers must send the department the following:

(a) Documentation of successful completion of the manufacturer's training;

(b) Documentation demonstrating privilege at a licensed hospital to perform hysteroscopies;

(c) Documentation attesting to having successfully performed twenty or more hysteroscopies; and

(d) Office protocols for screening and follow-up.

HYSTERECTOMY

(((~~10~~))) (13) Hysterectomies performed for medical reasons may require expedited prior authorization as explained in WAC 388-531-0200(2).

(((~~11) MAA~~))) (14) The department reimburses hysterectomy without prior authorization in either of the following circumstances:

(a) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(b) The client is forty-six years of age or older.

(((~~(12) MAA~~)) (15) The department reimburses all attending providers for the hysterectomy procedure only when the provider submits an appropriate, completed DSHS-approved consent form with the claim for reimbursement. If a prior authorization number is necessary for the procedure, it must be on the claim. ((~~MAA~~)) The department reimburses after the procedure is completed.

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

WSR 10-20-169

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed October 6, 2010, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-084.

Title of Rule and Other Identifying Information: Chapter 314-02 WAC, Requirement for retail liquor licensees and chapter 314-16 WAC, Retail licensees.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on November 10, 2010, at 10:00 a.m.

Date of Intended Adoption: November 17, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by November 10, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by November 10, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implementation of legislation passed in 2010 may require changes in current rule or adoption of new rules to clarify and provide further guidance to licensees who are impacted by the new regulations. As part of the liquor control board's ongoing rules review process, chapter 314-02 WAC was also reviewed for relevance, clarity, and accuracy. Several sections were moved from chapter 314-16 WAC to chapter 314-02 WAC.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.363.

Statute Being Implemented: RCW 66.24.363.

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; Enforcement: Pat Parmer, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

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

October 6, 2010
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

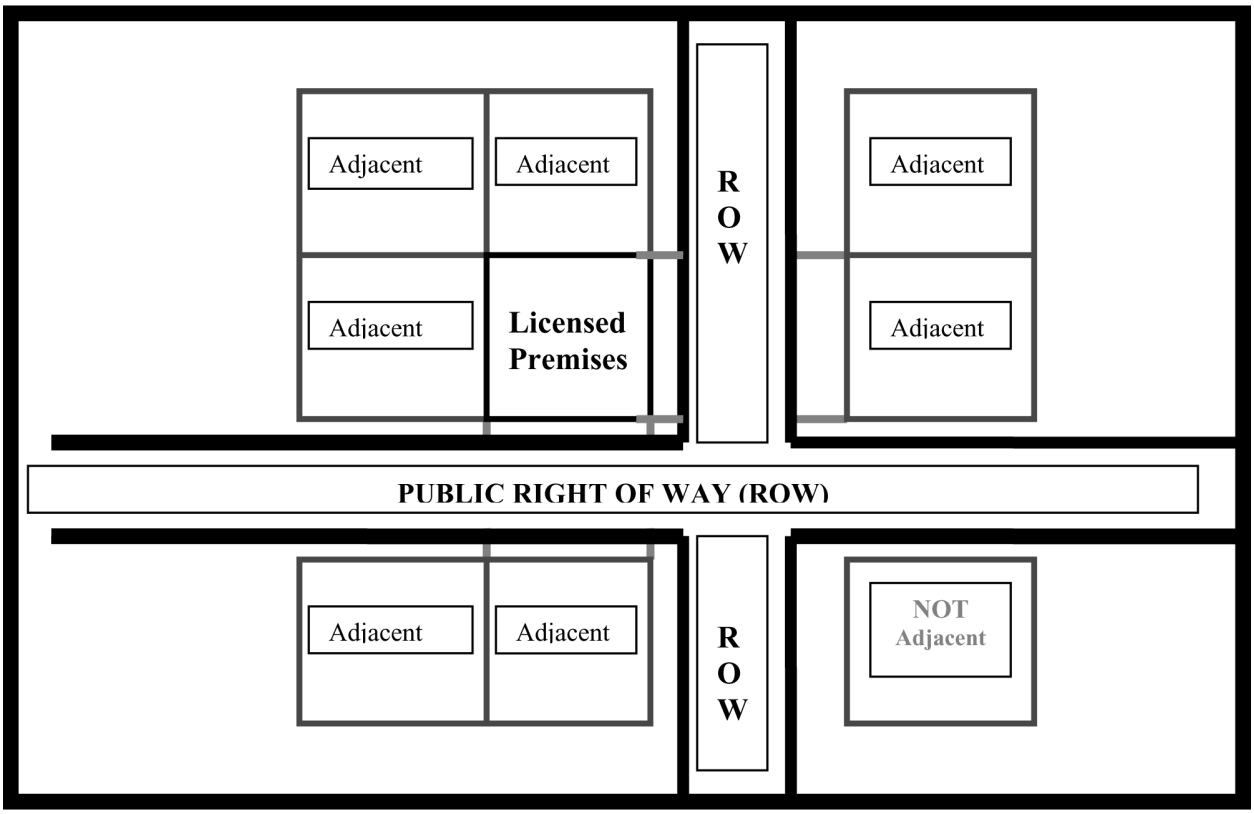
WAC 314-02-005 What is the purpose of chapter 314-02 WAC? Chapter 314-02 WAC outlines the qualifications for the following liquor licenses ((~~and permits~~)):

(1) Spirits, beer, and wine restaurants;
(2) Nightclubs;
(3) Spirits, beer, and wine restaurant restricted;
(4) Hotels;
(((~~4~~))) (5) Beer and/or wine restaurants;
(6) Sports/entertainment facilities;
(((~~5~~))) (7) Snack bars;
(((~~6~~))) (8) Taverns;
(((~~7~~))) (9) Motels;
(((~~(8) Bed and breakfasts;~~
~~(9)~~))) (10) Nonprofit arts organizations;
(((~~(10) Public houses;~~)))
(11) Grocery stores;
(12) Beer/wine specialty shops; and
(13) Beer/wine gift delivery ((~~business~~)) businesses.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



(2) "Appetizer" means a small portion of food served before the main course of a meal to stimulate the appetite. An appetizer does not qualify as minimum food service.

(3) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(((~~(3)~~))) (4) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

(((~~(4)~~))) (5) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

(((~~(5)~~))) (6) "Designated area" means a space where alcohol may be sold, served, or consumed.

(((~~(6)~~))) (7) "Entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment services for the licensee. An entertainer is considered an employee of the liquor licensee per WAC 314-01-005. Patrons participating in entertainment are not considered employees.

(((~~(7)~~))) (8) "Entertainment" means dancing, karaoke, singing, comedy shows, concerts, TV broadcasts, contests with patron participation and/or performing for an audience.

(((~~(8)~~))) (9) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

(((~~(9)~~))) (10) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

(((~~(10)~~))) (11) "Limited food service" means items such as appetizers, sandwiches, salads, soups, pizza, hamburgers, or fry orders.

(12) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

(((~~(11)~~))) (13) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

(((~~(12)~~))) (14) "Minimum food service" means items such as sandwiches, salad, soup, pizza, hamburgers, and fry orders.

(((~~(13)~~))) (15) "Minor" means a person under twenty-one years of age.

(((~~(14)~~))) (16) "On-Premises liquor licensed premises" means a building in which a business is located inside that is allowed to sell alcohol for consumption on the licensed premises.

(17) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(((~~(15)~~))) (18) "Snack food" means items such as peanuts, popcorn, and chips.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

(a) Serve spirits by the individual glass for on-premises consumption;

(b) Serve beer by the bottle or can or by tap for on-premises consumption;

(c) Serve wine for on-premises consumption;

(d) Allow patrons to remove recorked wine from the licensed premises ((~~in accordance with RCW 66.24.400~~));

(e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and

(f) Sell kegs of malt liquor with the appropriate endorsement.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 11:00 a.m. and 11:00 p.m., five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of the licensed premises are off-limits to minors. (RCW 66.44.310(2).) Minors may not purchase, possess, or consume liquor, and may not enter any areas that are classified as off-limits to minors. (RCW 66.44.290 and 66.44.310.) The purpose of this rule is to clarify the ways in which licensees can prevent minors from consuming alcohol or entering restricted areas.

(2) Dedicated dining areas - If a spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee that allows minors chooses to have live music, Karaoke, patron dancing, live entertainment, or contests involving physical participation by patrons in the dedicated dining area after 11:00 p.m., the licensee must either:

(a) Request board approval to reclassify the dining area to a lounge for the period of time that live entertainment is conducted, thus restricting minors during that time; or

(b) Notify the board's licensing and regulation division in writing at least forty-eight hours in advance that the sale, service, and consumption of liquor will end in the dedicated dining area after 11:00 p.m.

Request or notifications may cover one event or a series of recurring events over a period of time.

(3) **Barriers -** Licensees must place barriers around ((~~game rooms and~~)) areas that are classified as off-limits to minors and around game rooms.

(a) The barriers must clearly separate restricted areas, and must be at least forty-two inches high.

(b) The barriers must be permanently affixed (folding or retractable doors or other barriers that are permanently affixed are acceptable). A portable or moveable rope and stanchion is not acceptable. Those licensees that have been approved by the board for moveable barriers prior to the effective date of this rule may keep their movable barriers until the licensee requests alterations to the premises or the premises change ownership.

(c) Liquor bars cannot be used as the required barriers (see definition of liquor bar in WAC 314-02-010((~~(7)~~)) (10)).

(d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.

(e) "Minor prohibited" signs, as required by WAC 314-11-060(1), must be posted at each entrance to restricted areas.

(4) If the business allows minors, the business's primary entrance must open directly into a dedicated dining area or into a neutral area, such as a lobby or foyer, that leads directly to a dedicated dining area. Minors must be able to access restrooms without passing through a lounge or other age-restricted area.

(5) **Floor plans -** When applying for a license, the applicant must provide to the board's licensing and regulation division two copies of a detailed drawing of the entire premises. The drawing must:

(a) Be drawn one foot to one-quarter-inch scale;

(b) Have all rooms labeled according to their use; e.g., dining room, lounge, game room, kitchen, etc.; and

(c) Have all barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-030 Can a spirits, beer, and wine restaurant exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine restaurant licensee may exclude minors from the entire premises at all times ((~~or at certain times~~)) as approved by the board.

(1) To exclude minors from the entire licensed premises at all times ((~~or at certain times,~~)) the applicant or licensee must:

(a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times ((~~or at certain times indicated by the applicant or licensee~~)); or

(b) If already licensed as a spirits, beer, and wine restaurant that allows minors, the applicant may request permission from the board's licensing and regulation division to exclude minors at all times or ((~~at certain times indicated by the applicant or licensee~~)) for a specific event. See WAC 314-02-130 for instructions on requesting this approval.

(c) Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times or at certain times must meet all other requirements of this license,

including the food service requirements outlined in WAC 314-02-035.

(d) During the times that a spirits, beer, and wine restaurant licensee excludes minors from the entire premises, the licensee may not employ minors. (See ((~~WAC 314-11-040~~)) RCW 66.44.316 for more information on employing minors.)

(2) Restaurants that have less than fifteen percent of their total customer service area dedicated to dining must exclude minors from the entire premises. The licensee ((~~must~~)):

(a) Must pay the ((~~two thousand dollars~~)) largest annual license fee (less than fifty percent dedicated dining; ((~~and~~))

(b) Must meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035((~~.~~)); and

(c) May not employ minors at any time. (See RCW 66.44.316 for information on employing certain persons eighteen years and over under specific conditions.)

(3) See WAC 314-11-060(1) regarding requirements for "minors prohibited" signage.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put barriers around their dedicated dining area(s)? Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times are only required to place the barriers described in WAC 314-02-025(2) around dedicated dining areas for the purpose of paying the ((~~one thousand six hundred dollar~~)) lower annual license fee (fifty percent to ninety-nine percent dedicated dining area). Restaurants that do not allow minors at any time and do not wish to have barriers around their dining area(s) must pay the ((~~two thousand dollar~~)) higher annual license fee (less than fifty percent dedicated dining area). (See WAC 314-02-020 for an explanation of fees.)

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1) A spirits, beer, and wine restaurant licensee must serve at least ((~~four~~)) eight complete meals. ((~~Per RCW 66.24.410(2), a complete meal does not include hamburgers, sandwiches, salads, or fry orders.~~)) Establishments shall be maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. For purposes of this title:

(a) "Complete meal" means an entree and at least one ((~~additional course~~)) side dish.

(b) "Entree" means the main course of a meal. ((~~To qualify as one of the four required complete meals, the entree must require the use of a dining implement to eat, and cannot consist of a hamburger, sandwich, salad, or fry order~~)) Entrees may not only include items which have been prepared or cooked by reheating a precooked frozen food or carry-out item obtained from another business. Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items.

(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread.

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section ((~~and RCW 66.24.410(2)~~)).

(3) The complete meals must be prepared on the restaurant premises.

(4) A chef or cook must be on duty while complete meals are offered.

(5) A menu must be available to customers ((~~that lists, at a minimum, the required complete meals~~)).

(6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(7) Restaurants that have one hundred percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

(8) Restaurants with less than one hundred percent dedicated dining area (((~~restaurants in the one thousand seven hundred sixty-eight dollar or two thousand two hundred ten dollar fee category~~))) must maintain complete meal service for a minimum of five hours a day during the hours of ((~~11:00~~)) 8:00 a.m. and 11:00 p.m. ((~~on any day liquor is served~~)), five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, under such terms and conditions as the board determines are in the best interests of the public.

(((~~(a) Minimum~~)) Limited food service, such as appetizers, sandwiches, salads, soups, pizza, hamburgers, or fry orders, must be available outside of these hours. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(((~~(b) Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.~~)))

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. ((~~If applicable,~~)) A statement that minimum food service is available outside of those hours must also be posted or listed on the menu.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

(1) To exclude minors from the entire licensed premises at all times, the applicant must:

(a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.

(2) Spirits, beer, and wine nightclub licensees who exclude minors from the premises may not employ minors.

(See ((~~WAC 314-11-040~~)) RCW 66.44.310 for more information on employing minors.)

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

(a) Serve spirits by the individual serving ((~~at retail~~)) for consumption on the licensed premises;

(b) Serve beer, including strong beer, and wine for consumption on the licensed premises;

(c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;

(d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;

(e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; and

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container.

(2) The annual fee for a hotel license is two thousand dollars.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-0411 What are the food service requirements for a hotel license? (1) A hotel licensee must have the ability to serve ((~~at least four~~)) complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5)(a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

NEW SECTION

WAC 314-02-042 Spirits, beer and wine restaurant restricted—Qualifications. (1) Spirits, beer and wine restaurant restricted licensees shall govern their operations in selling liquor in accordance with the regulations set forth in Title 66 RCW. Such licensees may sell liquor in accordance with these regulations, only to members, invited guests, and holders of cards as authorized by chapter 314-40 WAC.

(2)(a) Applications for new spirits, beer and wine restaurant restricted licenses shall be accompanied by proof that:

(i) The business has been in operation for at least one year immediately prior to the date of its application. Such proof should include records of membership as well as an indication as to numbers and types of membership.

(ii) Membership or admission will not be denied to any person because of race, creed, color, national origin, sex or the presence of any sensory, mental or physical handicap.

(b) Spirits, beer and wine restaurant restricted applicants and licensees must meet the provisions of WAC 314-02-035.

(3) Under RCW 66.24.450, the board may issue an endorsement allowing the club to hold up to forty nonclub, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(4) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

(5) See chapter 314-40 WAC for additional rules on clubs.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	$221
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	$221
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	$133
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30).

(a) Minimum food service is required, as defined in WAC 314-02-010((~~(12)~~)) (14).

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, five days a week. The board may consider written requests to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

NEW SECTION

WAC 314-02-056 Sports/entertainment facility license—Purpose. (1) **What is the purpose of the rules governing the use of alcohol in sports/entertainment facilities?**

(a) In RCW 66.24.570, the legislature established a spirits, beer, and wine license for arenas, coliseums, stadiums, or other facilities where sporting, entertainment, and special events are presented.

(b) These rules provide a framework for the enforcement of liquor laws and regulations, particularly those prohibiting the sale of alcohol to persons under twenty-one years of age or persons who are apparently intoxicated.

(c) This framework recognizes the unique conditions associated with events attended by large crowds consisting of diverse age groups.

(2) **Will the liquor control board recognize the differences between types of sports/entertainment facilities?** Yes. A sports/entertainment facility must submit an operating plan, which must be approved by the board prior to the issuance of a license. All plans are required to meet the minimum standards outlined in WAC 314-02-058. The board will take into consideration the unique features of each facility when approving an operating plan, including the seating accommodations, eating facilities, and circulation patterns.

NEW SECTION

WAC 314-02-057 Definitions. (1) **Premises -** buildings, parking lots, and any open areas that are adjacent to and owned, leased, or managed by the licensee and under the licensee's control.

(2) **Event categories -** types of events that the licensee expects to hold on the premises:

(a) **Professional sporting event -** a contest involving paid athletes and sanctioned by a professional sports organization that regulates the specific sport.

(i) A preapproved level of alcohol service will be applied to the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events (relay races, dashes, pole vaulting, etc.).

(ii) For all other professional sporting events, the board will determine the level of alcohol service on a case-by-case basis, as approved in the operating plan.

(b) **Amateur sporting event -** a contest or demonstration involving athletes who receive no monetary compensation that is sanctioned by a national or regional amateur athletic regulatory organization.

(c) **Entertainment event -** a concert, comedy act, or similar event intended for the entertainment of the audience.

(d) **Special event -** a convention, trade show, or other public/private event to large too be held in a separate banquet or meeting room within the facility.

(e) **Private event -** an event not open to the public such as a wedding, private party, or business meeting, where the facility or a portion of the facility where the event is held is not accessible to the general public during the time of the private event.

(3) **Hawking -** the practice of selling alcohol in seating areas by roving servers who carry the beverages with them, as outlined in WAC 314-02-058(4). Because of row seating arrangements, servers normally do not have direct access to customers. Therefore, service usually requires that drinks, money, and identification be passed down rows, involving other spectators.

(4) **Club seats -** a specifically designated and controlled seating area that is distinct from general seating with food and beverage service provided by servers directly to the customer.

NEW SECTION

WAC 314-02-058 Sports/entertainment facility licenses—Operating plans. (1) **What rules govern the submission of operating plans?**

(a) To receive a license, a sports/entertainment facility must submit an operating plan for board approval.

(b) Once approved, the plan remains in effect until the licensee requests a change or the board determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan.

(c) The plan must be submitted in a format designated by the board.

(d) The plan must contain all of the following elements:

(i) How the sports/entertainment facility will prevent the sale and service of alcohol to persons under twenty-one years of age and those who appear to be intoxicated.

(ii) The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served.

(iii) Training provided to staff who serve, regulate, or supervise the service of alcohol.

(iv) The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one transaction.

(v) A list of event categories (see WAC 314-02-057(2)) to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event.

(vi) The date must be included in the operating plan.

(vii) The pages must be numbered in the operating plan.

(viii) The operating plan must be signed by a principal of the licensed entity.

(e) Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the facility's local liquor enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the local enforcement office at least seventy-two hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. Notice of private events is not required when the event is being held in conjunction with a professional or amateur sporting event, an entertainment event, or a special event as outlined in WAC 314-02-057(2).

(2) **May the liquor control board impose any other mandatory standards as a part of an operating plan?** Yes. To prevent persons who are under twenty-one years of age or who appear intoxicated from gaining access to alcohol, the board may impose the following standards as part of an operating plan:

(a) The board may require that an operating plan include additional mandatory requirements if it is judged by the board that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one years of age or who are apparently intoxicated from obtaining alcohol.

(b) To permit alcohol servers to establish the age of patrons and to prevent over-service, sports/entertainment facilities must meet minimum lighting requirements established by WAC 314-11-055 in any area where alcohol is served or consumed. For the purpose of establishing a permanent technical standard, an operating plan may include a lighting standard measured in foot candles, so long as the candle power of the lighting is, at all times, sufficient to permit alcohol servers to establish the validity of documents printed in eight point type.

(3) **Where will spirits, beer, and wine be allowed in a sports/entertainment facility?** The purpose of the following matrix is to outline where and when alcohol service will normally be permitted. Due to the unique nature of each facility, the board will determine the permitted alcohol service based on the facility's approved operating plan.

(a) If alcohol service is requested outside of the parameters listed below, a special request with justification for the alcohol service area must be submitted with the operating plan for consideration by the board.

Type of event as defined in WAC 314-02-057	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	Wine may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - beer may be served throughout seating areas, subject to the provisions of WAC 314-02-058(4)
Professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events	x	x	x	x	x

Type of event as defined in WAC 314-02-057	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	Wine may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - beer may be served throughout seating areas, subject to the provisions of WAC 314-02-058(4)
All other professional sporting events (level of alcohol service will be determined on a case-by-case basis per the approved operating plan)	x	x	x	x	
Amateur sporting events	x	x			
Entertainment events	x	x			
Special events	x	x			

(b) For private events, beer, wine, and spirits may be served in the area where the event is held. This area may be a separate meeting or banquet room or the entire facility.

(c) In order to minimize youth access to alcohol, the board may prohibit or restrict the service of alcohol at events where the attendance is expected to be over thirty percent persons under twenty-one years of age. This restriction will not apply to the professional sporting events outlined in WAC 314-02-057 (2)(a).

(4) **Will hawking be allowed at sports/entertainment facilities?** Subject to the provisions of this rule, hawking may be permitted in general seating areas for the sale and consumption of beer, at the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events only, as defined by WAC 314-02-057 (2)(a).

(a) An operating plan must include procedures for hawkers to verify the age of purchasers and to prevent service to apparently intoxicated persons.

(b) During hawking, any patron may decline to handle alcoholic beverages, either on behalf of themselves and for any person under their supervision. When a patron objects to handling alcohol, hawkers must accommodate the objection. The facility operating plan will address how hawking will be managed, including how hawkers will respond to patron objections to handling alcohol.

(c) Each facility's hawking authorization will be reviewed by the board one year after the facility commences hawking under these rules and then every two years. This review, which will take no more than ninety days, will recommend the continuation, modification, or repeal of the hawking authorization. The decision to continue hawking will be based on:

(i) The facility's demonstrated record of preventing service of liquor to persons under twenty-one years of age and to persons who appear intoxicated; and

(ii) Public input submitted to the board. The licensee must post written notices to its patrons at fixed points of alcohol sales on the premises and in programs at events where hawking occurs for at least sixty days prior to the review period, stating that the facility's hawking authorization is up for review by the board, and directing comment to the board. The wording and method of notice must be approved by the board.

NEW SECTION

WAC 314-02-059 How will the operating plans be enforced? (1) The board will inspect sports/entertainment facilities and issue violation notices for:

(a) Infractions of all liquor laws and rules, particularly with regard to persons who appear intoxicated or who are under twenty-one years of age; and

(b) Any significant deviation from the approved operating plan.

(2) Violations of liquor laws or rules that occur as a result of not following the approved operating plan will be considered aggravating circumstances, which permit the board to impose added penalties.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred sixty-six dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for

human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(6) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(7) A grocery store applicant or licensee may apply for a beer and wine tasting endorsement which allows beer and wine tastings on the grocery store premises. The annual fee for this endorsement is two hundred dollars.

NEW SECTION

WAC 314-02-102 What are the requirements for a grocery store licensee to conduct beer and wine tastings? (1) To be issued a beer and wine tasting endorsement, the licensee must meet the following criteria:

(a) The licensee has retail sales of grocery products for off-premises consumption, not to include candy, soda pop, beer or wine, that are more than fifty percent of the licensee's gross sales, or the licensee is a membership organization that requires members to be at least eighteen years of age;

(b) The licensee operates a fully enclosed retail area encompassing at least nine thousand square feet. The board may issue the endorsement to a licensee with a retail area with less than nine thousand square feet if there is no licensee in the community that meets the nine thousand square foot requirement under the following conditions: There must be at least two employees on duty any time the licensee is conducting beer and wine tasting events. One employee must be dedicated to beer and wine tastings during these events;

(c) The licensee has not had more than one public safety administrative violation within the last two years. The two-year window is counted from two years prior to the date of the application for the beer and wine tasting endorsement. (See WAC 314-29-020 for a list of public safety violations.)

(2) In addition to the conditions in RCW 66.24.363, a beer and wine tasting must be conducted under the following:

(a) The licensee must provide a sketch of the tasting area. Fixed or moveable barriers are required around the tasting area to ensure persons under twenty-one years of age do not possess or consume alcohol;

(b) Signs advertising beer and wine tastings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(c) Persons serving beer and wine during tasting events must hold a class 12 alcohol server permit.

(3) Licensees are required to send a list of scheduled beer and wine tastings to their regional enforcement office at the beginning of each month. The date and time for each beer and wine tasting must be included.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred eleven dollars.

(3) Qualifications for license—To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample—A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

(a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the ((~~board~~)) board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-120 How do licensees get keg registration forms? (1) The board will provide keg registration forms free of charge to licensees who hold (a) a beer and/or wine restaurant license in combination with an off-premises beer and/or wine endorsement; (b) a tavern license in combination with an off-premises beer and/or wine endorsement; or (c) a beer and/or wine specialty shop license with a keg endorsement.

(2) Licensees who hold a grocery store license with a keg endorsement, or a spirits, beer, and wine restaurant license with a keg endorsement, must purchase the keg registration forms. Keg registration books can be ordered on-line at the liquor control board web site or from ((~~their local board~~)) the enforcement ((~~office~~)) customer service line for four dollars per book of twenty-five forms.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-125 What types of activities on a licensed premises require notice to the board? Liquor licensees must notify their local enforcement office in writing at least ((~~forty-eight hours before~~)) five days prior to conducting the following activities:

(1) Male/female dance reviews, subject to the provisions of WAC 314-11-050;

(2) Live boxing or wrestling;

(3) Contests or games where patrons are part of the entertainment; ((~~and~~))

(4) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption; and

(5) Outside service for one-time events such as a holiday celebration where liquor service and consumption is planned to extend to an area of the premises that does not have board approval for liquor service. The licensee must have leasehold rights to the area where alcohol service and consumption is planned.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
(1) • excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • reclassifying a lounge as open to persons under twenty-one years of age; • extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); ((~~• storing liquor off of the licensed premises;~~)) • initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; ((~~• installing a pass-through window for walk-up customers; and~~ ~~• using a licensed premises as an access to another business.~~)) (2) • any alteration that affects the size of a premises' customer service area.	(a) The board's licensing and regulation division will ((~~respond to~~)) make initial contact on the request for alteration within five business days. (b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received. (c) Board approval will be based on the alteration meeting the requirements outlined in this title. (a) The board's licensing and regulation division will ((~~respond to~~)) make an initial response on the licensee's request for alteration within five business days. (b) The licensee must contact their local liquor control agent when the alteration is completed. (c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent.

Type of alteration	Approval process and timeline
	(d) Board approval will be based on the alteration meeting the requirements outlined in this title.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-02-085	What is a bed and breakfast permit?
WAC 314-02-095	What is a public house license?

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-16-195	Spirits, beer and wine restaurant restricted—Qualifications.
WAC 314-16-260	Sports/entertainment facility license—Purpose.
WAC 314-16-265	Definitions.
WAC 314-16-270	Sports/entertainment facility licenses—Operating plans.
WAC 314-16-275	How will the operating plans be enforced?

WSR 10-20-170
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed October 6, 2010, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-111.

Title of Rule and Other Identifying Information: WAC 363-116-070 Collection of fees, 363-116-360 Exempt vessels, and 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on November 9, 2010, at 11:30 a.m.

Date of Intended Adoption: November 9, 2010.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by November 2, 2010.

Assistance for Persons with Disabilities: Contact Shawna Erickson by November 5, 2010, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule is intended to:

- Increase the annual state pilot license fee for an active pilot from $6,000 to an amount within a range of $7,500 to $9,000.
- Increase all passenger and yacht exemption fee categories by fifty percent.
- Increase the training surcharge category of the Puget Sound Pilotage District tariff by $10. This $10 amount is intended to support the board's costs associated with certain specified training-related expenditures. The initial $10 charge already established in this tariff category is intended to continue to support trainee stipends paid to pilot trainees engaged in the stipend program.

Fees are the sole source of funding for the operations of the board. Without adequate fee increases, operating revenue will fall short of the anticipated expenditures for the remainder of the 2009-11 biennium and future biennia.

Reasons Supporting Proposal: It is necessary to establish sufficient funding to ensure the board's continued administration of the Pilotage Act.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Legislative authority to raise pilot license fees expires on June 30, 2011, pursuant to RCW 88.16.090(7).

The maximum amount to be charged for a vessel exemption application is $1,500 pursuant to RCW 88.16.070(2).

The board has the authority to direct the disposition of all training surcharge receipts collected through pilotage tariffs pursuant to WAC 363-116-078 (10)(b). Under this authority the board intends to direct the disposition of these funds to include payment of certain specified training-related expenditures in addition to pilot trainee stipends.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the attached proposed language.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 5, 2010
Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-070 Collection of fees. All pilots shall pay an annual license fee of ((~~six~~)) seven thousand five hundred to nine thousand dollars or such amount as may be set by statute for every year in which they perform any pilotage services. If a licensed pilot does not perform pilotage services during a license year, his/her fee for that year shall be reduced to one thousand dollars upon application to the board. The board of pilotage commissioners shall receive all fees for licenses or for other purposes and make proper accounting of same and transmit all such funds to the pilotage account.

AMENDATORY SECTION (Amending WSR 10-12-059, filed 5/27/10, effective 7/1/10)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, 2010, through 2400 hours June 30, 2011.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	$48.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	$349.00
Radio Direction Finder Calibration	$349.00
Launching Vessels	$524.00
Trial Trips, 6 hours or less (minimum $984.00)	$164.00 per hour
Trial Trips, over 6 hours (two pilots)	$328.00 per hour
Shilshole Bay – Salmon Bay	$205.00
Salmon Bay – Lake Union	$159.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	$205.00
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of $258.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of $123.00 per bridge.

Ships 90' beam and/or over:

A charge of $350.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of $244.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus $266.00 per hour standby. No charge if delay is 60 minutes or less. If the delay

is more than 60 minutes, charge is $266.00 for every hour or fraction thereof.

Sailing Delay:
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is $266.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:
When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of $266.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:
When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of $266.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:
0 to 20,000 gross tons:
Additional charge to LOA zone mileage of $0.0082 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:
Additional charge to LOA zone mileage of $0.0846 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:
In excess of 50,000 gross tons, the charge shall be $0.1012 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - $15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x $2.00 per mile.

Delinquent Payment Charge:
1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:
Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:
In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge	$2,107.00
Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	$283.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.	$283.00 per hour
Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.	$525.00
Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.	$499.00
Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.	$630.00

Training Surcharge:
A surcharge of $((~~10.00~~)) 20.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:
The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	255	396	675	1,006	1,354	1,757
450 - 459	266	403	679	1,021	1,376	1,766
460 - 469	268	407	690	1,038	1,395	1,774
470 - 479	277	419	698	1,059	1,399	1,777
480 - 489	285	426	701	1,078	1,408	1,785
490 - 499	289	432	712	1,098	1,424	1,794
500 - 509	304	440	722	1,110	1,436	1,805
510 - 519	306	448	729	1,127	1,451	1,812
520 - 529	310	464	740	1,132	1,464	1,826
530 - 539	319	470	749	1,145	1,487	1,847
540 - 549	324	476	766	1,157	1,510	1,864
550 - 559	331	492	771	1,174	1,522	1,882
560 - 569	343	512	786	1,185	1,536	1,899
570 - 579	350	516	789	1,190	1,552	1,912
580 - 589	365	524	808	1,199	1,561	1,931
590 - 599	382	536	813	1,205	1,584	1,954
600 - 609	396	552	824	1,209	1,604	1,963
610 - 619	418	557	838	1,214	1,619	1,981
620 - 629	434	564	846	1,229	1,638	2,004
630 - 639	454	574	855	1,232	1,652	2,021
640 - 649	472	587	864	1,234	1,666	2,036
650 - 659	505	597	880	1,244	1,686	2,057
660 - 669	515	605	887	1,251	1,705	2,073
670 - 679	534	620	896	1,274	1,724	2,086
680 - 689	541	630	908	1,284	1,739	2,106
690 - 699	557	640	922	1,307	1,757	2,150
700 - 719	582	661	939	1,324	1,791	2,174
720 - 739	616	679	963	1,342	1,826	2,210

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
740 - 759	640	712	982	1,354	1,864	2,250
760 - 779	665	734	1,006	1,376	1,899	2,279
780 - 799	698	767	1,021	1,395	1,931	2,320
800 - 819	726	789	1,041	1,402	1,963	2,355
820 - 839	749	818	1,065	1,424	2,004	2,382
840 - 859	781	851	1,086	1,441	2,034	2,423
860 - 879	810	880	1,105	1,478	2,073	2,458
880 - 899	838	905	1,127	1,512	2,106	2,494
900 - 919	863	935	1,146	1,551	2,150	2,528
920 - 939	890	963	1,174	1,584	2,172	2,563
940 - 959	922	988	1,191	1,619	2,210	2,594
960 - 979	943	1,017	1,212	1,652	2,250	2,633
980 - 999	974	1,041	1,233	1,686	2,279	2,667
1000 - 1019	1,034	1,108	1,288	1,776	2,387	2,782
1020 - 1039	1,062	1,141	1,328	1,826	2,459	2,863
1040 - 1059	1,094	1,169	1,367	1,882	2,529	2,948
1060 - 1079	1,127	1,210	1,407	1,938	2,608	3,035
1080 - 1099	1,161	1,244	1,448	1,994	2,684	3,127
1100 - 1119	1,194	1,282	1,492	2,056	2,765	3,221
1120 - 1139	1,231	1,323	1,538	2,116	2,848	3,317
1140 - 1159	1,266	1,360	1,582	2,179	2,934	3,418
1160 - 1179	1,304	1,399	1,632	2,245	3,021	3,518
1180 - 1199	1,344	1,442	1,679	2,312	3,113	3,625
1200 - 1219	1,385	1,485	1,728	2,382	3,206	3,732
1220 - 1239	1,424	1,530	1,779	2,453	3,300	3,844
1240 - 1259	1,467	1,575	1,831	2,526	3,400	3,958
1260 - 1279	1,510	1,621	1,887	2,602	3,503	4,077
1280 - 1299	1,555	1,671	1,945	2,680	3,605	4,200
1300 - 1319	1,603	1,718	2,001	2,759	3,714	4,324
1320 - 1339	1,651	1,771	2,063	2,842	3,824	4,455
1340 - 1359	1,698	1,824	2,124	2,926	3,939	4,589
1360 - 1379	1,750	1,877	2,187	3,016	4,055	4,724
1380 - 1399	1,801	1,933	2,254	3,104	4,178	4,868
1400 - 1419	1,856	1,992	2,319	3,196	4,302	5,013
1420 - 1439	1,911	2,052	2,389	3,293	4,433	5,163
1440 - 1459	1,970	2,114	2,462	3,391	4,565	5,317
1460 - 1479	2,025	2,175	2,534	3,492	4,702	5,474
1480 - 1499	2,087	2,240	2,609	3,596	4,841	5,639
1500 & Over	2,150	2,308	2,686	3,706	4,985	5,807

AMENDATORY SECTION (Amending WSR 97-12-018, filed 5/28/97, effective 6/28/97)

WAC 363-116-360 Exempt vessels. (1) Under the authority of RCW 88.16.070, application may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels or yachts, which are not more than five hundred gross tons (international), do not exceed two hundred feet in length, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British

Columbia. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least sixty days prior to planned vessel operations in the Puget Sound pilotage district where possible. Petitions filed with less than sixty days notice may be considered by the chair at the chair's discretion.

(b) The petition requesting exemption shall be on a board-approved form which shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the dates of planned operations, and such other information as the board shall require on its petition form.

(c) Pay the appropriate initial application or renewal fee with the submittal of the petition, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be reviewed by the chair, who shall make a recommendation to the board to be considered at its next regularly or specially scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist. Any grant of an interim exemption may contain such conditions as the chair deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include a requirement that the vessel employ the services of a pilot on its initial voyage into Puget Sound waters or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than sixteen hundred gross tons or as a master of inland steam or motor vessels of not more than five hundred gross tons, such license to include a current radar endorsement.

(3) The recommendation of the chair shall be considered at the next regular or specially scheduled meeting of the board. Interested parties shall receive notice and opportunity for hearing at that time, provided that the party notifies the board at least five days in advance of the meeting of its desire for hearing.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	3 Months or Less	1 Year or Less	Annual Renewal
A. Yachts			
Up to 100 feet LOA	$ ((~~300~~)) 450	$ ((~~500~~)) 750	$ ((~~200~~)) 300
A. Yachts			
Up to 200 feet LOA	((~~500~~)) 750	((~~750~~)) 1125	((~~300~~)) 450
B. Passenger Vessels			
Up to 100 feet LOA	((~~750~~)) 1125	((~~1000~~)) 1500	((~~400~~)) 600
Up to 200 feet LOA	((~~1250~~)) 1500	1500	((~~500~~)) 750

WSR 10-20-171
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 6, 2010, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-109 and 09-17-003.

Title of Rule and Other Identifying Information: Chapter 388-96 WAC, Nursing facility medicaid payment system.

The following sections are being amended or repealed: Repealing WAC 388-96-202, 388-96-740, 388-96-741, 388-96-742 and 388-96-749; and amending WAC 388-96-010, 388-96-108, 388-96-217, 388-96-218, 388-96-366, 388-96-384, 388-96-534, 388-96-535, 388-96-536, 388-96-542, 388-96-559, 388-96-561, 388-96-565, 388-96-585, 388-96-708, 388-96-709, 388-96-747, 388-96-748, 388-96-758, 388-96-759, 388-96-766, 388-96-776, 388-96-781, 388-96-782, 388-96-802, 388-96-803, 388-96-901, and 388-96-904.

Numerous new sections are being added to absorb the repealed sections of chapter 74.46 RCW, Nursing facility medicaid payment system.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on December 7, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 7, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 23, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature in ESSB 6872 simplified chapter 74.46 RCW by repealing numerous section[s] and granting the department the author-

ity to incorporate the detail of the repealed sections in chapter 388-96 WAC. Also, the department will amend or adopt new rules to implement ESSB 6444 section 206. Finally, the department proposes to [the] following: WAC 388-96-758 and 388-96-759 to incorporate changes made in the low-wage worker add-on by section 206(12), chapter 564, Laws of 2009; WAC 388-96-904 to clarify applying for an adjudicative proceeding; WAC 388-96-781 to add expanded community services (ECS), extraordinary medical placement (EMP), and vent-trach (VT) as categories; WAC 388-96-366 through 388-96-384 that authorizations from clients' trust funds must be obtained for each disbursement; WAC 388-96-366(3) to increase amount of a resident's funds that an NH must deposit from $50 to $100; WAC 388-96-580 to clarify allowable leased office equipment; WAC 388-96-542 to address the "may" in the definition of "home and central office costs": The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of ["]care services to authorized patients." found in RCW 74.46.020; and WAC 388-96-766 to codify the use of e-mail notices as being legally sufficient. Also, requiring nursing facilities to maintain a current e-mail address with the department. Also, to clarify regulations by codifying current policies and practices and editing previous codifications for substance and form. All sections may be amended.

Reasons Supporting Proposal: ESSB 6872 (chapter 34, Laws of 2010, 1st sp. sess.) and ESSB 6444 section 206, supplemental operating budget (chapter 37, Laws of 2010, 1st sp. sess.).

Statutory Authority for Adoption: Chapter 74.46 RCW.

Statute Being Implemented: Chapter 74.46 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Patricia Hague, mailstop 45600, (360) 725-2447; Implementation and Enforcement: Ken Callaghan, mailstop 45600, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 34.05.328, the rules proposed for permanent adoption are significant legislative rules. Under RCW 34.05.328 (5)(b)(vi), the department is exempt from preparing a cost-benefit analysis (CBA). Significant legislative rules that set or adjust fees or rates pursuant to legislative standards do not require a CBA.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 19.85.025(3), the department is not required to complete a small business economic impact statement for rules that set or adjust fees or rates pursuant to legislative standards (RCW 34.05.310 (4)(f)).

September 30, 2010

Katherine I. Vasquez

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-22 issue of the Register.

WSR 10-20-173

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed October 6, 2010, 11:35 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands?, 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities?, 357-58-546 What is the department's authority to review actions taken by an agency under chapter 357-58 or to audit an agency's WMS processes?, 357-58-027 Must agencies maintain position descriptions for each WMS position?, and 357-58-028 Must a standard form be used to describe each WMS position?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on November 10, 2010, at 8:30 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by November 3, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by November 3, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In December 2009 Eva Santos, director, department of personnel (DOP), brought together a team of human resource professionals from twelve state agencies and charged them with developing and recommending a uniform, enterprise-wide process for the inclusion and band placement of Washington management service (WMS) positions. The ultimate goal is to improve accountability, transparency, and consistency of the WMS as a whole.

The team began its work in December 2009 and sent their final recommendations which included draft rules to DOP in February 2010. DOP staff used the team's recommended draft rules as a starting point. We discussed the first draft at the September 15, 2010, rules meeting and had an open comment period through September 30, 2010. Changes were made based on comments received.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

October 6, 2010
Eva N. Santos
Director

NEW SECTION

WAC 357-58-027 Must agencies maintain position descriptions for each WMS position? Agencies must maintain a current position description for each WMS position.

NEW SECTION

WAC 357-58-028 Must a standard form be used to describe each WMS position? A standard form developed by the director, or an alternate form approved by the director, must be used for each WMS position description.

NEW SECTION

WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands? (1) Each agency must develop a WMS inclusion and evaluation procedure consistent with this chapter and guidelines established by the department.

(2) The inclusion and evaluation procedure must be approved by the director.

(3) The procedure must include processes for requesting and determining inclusion and evaluating and re-evaluating positions for placement within management bands. The procedure must require, at a minimum:

(a) Appointment of a human resource professional as the agency's WMS coordinator who serves as the single point of contact for the department regarding WMS issues.

(b) Use of a form prescribed by the director or an alternate form approved by the director for requests to establish or re-evaluate WMS positions.

(c) Approval of the request for inclusion or evaluation by the position's agency head or designee.

(d) Inclusion determination and position evaluation must be performed by a committee of three or more people, which must include:

i. The agency's WMS coordinator;

ii. A manager from the agency who has comprehensive knowledge of the agency's business; and

iii. A management representative from another agency or human resource professional from another agency.

(e) Only those who have successfully completed training may participate on a WMS committee. The training must satisfy the core curriculum as defined by the department.

NEW SECTION

WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities? (1) Agencies must submit their WMS activity reports to the department and make them available as prescribed by the department.

(2) A roll-up of all agencies' WMS activities will be made available to agencies.

NEW SECTION

WAC 357-58-546 What is the department's authority to review actions taken by an agency under chapter 357-58 or to audit an agency's WMS processes? (1) Under the authority of RCW 41.06.130 and 41.06.500, the director of the department of personnel retains the right to review:

(a) Any action taken by an agency under chapter 357-58 WAC; and

(b) An agency's administration of the WMS program.

(2) An agency's compliance with WMS procedures and rules will be audited. Audit requirements will be prescribed by the department.

Reviser's note: The unnecessary underscoring 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.

REPEALER

The following chapters of the Washington Administrative Code are repealed:

WAC 357-58-545	Does the director of the department of personnel have the rights to review an agency's administration of WMS?
WAC 357-58-030	Who determines if a position is included in the WMS?

Reviser's note: The repealer section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to chapters is probably intended to be sections.

WSR 10-20-174
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed October 6, 2010, 11:35 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-13-085 How is the effective date of a reallocation determined?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on November 10, 2010, at 8:30 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by November 3, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by November 3, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing language be added to WAC 357-13-085 which references the fifteen calendar days' notice requirement found in WAC 357-13-070. We are also proposing adding new subsection (4) which explains the effective date of a reallocation downward when the reallocation is a result of a director's review or of a personnel resources board order.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

October 6, 2010
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-085 How is the effective date of a reallocation determined? The effective date of a reallocation is determined as follows:

(1) The effective date of a reallocation resulting from the director's implementation or revisions to the classification plan is the effective date of the director's action.

(2) The effective date of an employer-initiated reallocation is determined by the employer. Notice of a reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(3) The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer unless the result of the position review is a reallocation to a class with a lower salary range maximum. Notice of reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(4) The effective date of a reallocation to a class with a lower salary range maximum resulting from a director's review determination to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the director's determination unless the review determination is appealed to the personnel resources board. The effective date of a reallocation to a class with a lower salary range maximum resulting from a board order to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the board's order.

WSR 10-20-175
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed October 6, 2010, 11:35 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination? and 357-31-360 Must employees who have been ordered to required military duty, training, or drills be granted paid military leave?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on November 10, 2010, at 8:30 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by November 3, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by November 3, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify that if an employee is not yet enlisted in the military, they should be allowed to use paid miscellaneous leave for a physical examination to determine physical fitness. If the employee is already in the military, they would use paid military leave for this purpose. If an enlisted employee has no military leave available, they should be allowed to use paid miscellaneous leave.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

October 6, 2010
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-03-014, filed 1/9/09, effective 2/13/09)

WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination? Leave with pay **must** be granted to an employee:

(1) To allow an employee to receive assessment from the employee assistance program; ((~~or~~))

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours; or

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

AMENDATORY SECTION (Amending WSR 10-11-075, filed 5/14/10, effective 6/15/10)

WAC 357-31-360 Must employees who have been ordered to required military duty, training, ((~~or~~)) drills, or required to appear for a physical examination be granted paid military leave? (1) Employees must be granted military leave with pay not to exceed twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for required military duty, training duty in the Washington National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States or any organized reserve or armed forces of the United States, or to report for drills including those in the National Guard under Title 10 U.S.C., or state active status. The employee is charged military leave only for the days that they are scheduled to work.

(2) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges, or pay.

(3) During paid military leave, the employee must receive the normal base salary.

(4) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

Employees who are not yet in the military may use paid miscellaneous leave for this purpose. Employees who are already in the military may use paid military leave as described in this section. An employee who is currently in the military may use paid miscellaneous leave for this purpose if they do not have paid military leave available.

WSR 10-20-176
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed October 6, 2010, 11:35 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-01-174 Full-time employee, 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, 357-31-435 Must employees use their own leave before using shared leave?, 357-31-190 When can an employee start to use accrued vacation leave?, 357-46-066 What is the notice requirement to temporarily layoff an employee?, 357-46-067 What is an employee's status during temporary layoff?, 357-58-553 What is the notice requirement to temporarily layoff a WMS employee?, 357-58-554 What is a WMS employee's status during temporary layoff?, 357-31-010 Which employees qualify for holiday compensation?, 357-31-020 For general government part-time employees, how is holiday compensation prorated?, 357-31-025 How many hours are higher education employees compensated for on a holiday?, 357-31-115 How many hours of sick leave does an employee earn each month?, 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month?, 357-31-125 For general government part-time employees, how is leave accrual prorated?, 357-31-170 At what rate do part-time employees accrue vacation leave?, 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month?, 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay?, 357-31-230 When can an employee use accrued compensatory time?, 357-31-355 How does leave without pay affect the duration of an employee's probationary period, trial service period or transition review period?, 357-31-567 When must an employer grant the use of recognition leave?, 357-46-069 How is an employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next?, 357-58-556 How is a WMS employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next?, and 357-52-012 Does an employee who has been temporarily laid off under chapter 32, Laws of 2010 have the right to appeal the temporary layoff?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on November 10, 2010, at 8:30 a.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by November 3, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by November 3, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes are a result of the passage of ESSB 6503. This bill requires immediate action to reduce expenditures during the 2009-2011 fiscal biennium. It is the intent of this bill that state agencies of the legislative branch, judicial branch, and executive branch including institutions of higher education, shall achieve a reduction in government operating expenses as provided in the bill. For some state employers this means implementing temporary layoffs. There are provisions in the bill which require us to make changes to the current temporary layoff rules in order to implement temporary layoffs as described in the bill.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

October 6, 2010
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-174 Full-time employee. An employee who is scheduled to work:

- Forty hours in one workweek;
- For hospital personnel assigned to a fourteen-day schedule, eighty hours over a fourteen-day period; or
- For law enforcement positions, one hundred sixty hours in the twenty-eight-day work period.

For the purpose of this definition, time spent on temporary layoff will count towards the hourly requirement.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-020 For general government part-time employees, how is holiday compensation ((~~pro rated~~)) prorated? Compensation for holidays (including personal holiday) for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment, excluding all holiday hours. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-025 How many hours are higher education employees compensated for on a holiday? When a holiday as designated under WAC 357-31-005 falls on a higher education employee's scheduled work day:

(1) Full-time employees receive eight hours of regular holiday pay per holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use of accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-115 How many hours of sick leave does an employee earn each month? (1) Full-time employees earn eight hours of sick leave per month.

(2) Part-time general government employees earn sick leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Part-time higher education employees earn sick leave on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-170 At what rate do part-time employees accrue vacation leave? (1) Part-time general govern-

ment employees accrue vacation leave credits on a pro rata basis in accordance with WAC 357-31-125.

(2) Part-time higher education employees accrue on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-125 For general government part-time employees, how is leave accrual ((~~pro rated~~)) prorated? Vacation and sick leave accruals for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay? Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063, or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.

(2) When a higher education employee takes more than ten working days of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-190 When can an employee start to use accrued vacation leave? An employee (part-time or full-time) must complete six months of continuous state employment before ((~~he/she~~)) they can use vacation leave. The only exception to the six-month requirement is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-230 When can an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider the work requirements of the department and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member

of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-31-355 How does leave without pay affect the duration of an employee's probationary period, trial service period or transition review period? If an employee uses leave without pay for an entire workshift while serving a probationary period, trial service period or transition review period, the probationary period, trial service period or transition review period is extended by one work day for each workshift of leave without pay. The duration of an employee's probationary period, trial service period, or transition review period shall not be extended for periods of time spent on temporary layoff.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers ((~~his/her~~)) their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; ((~~or~~))

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655; or

(e) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use shared leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

(2) The illness, injury, impairment, condition, call to service, ((~~or~~)) emergency volunteer service, ((~~or~~)) consequence of domestic violence, sexual assault, or stalking, or temporary layoff under chapter 32, Laws of 2010, has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete ((~~his or her~~)) their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) or (d) of this section; or

(d) Compensatory time, recognition leave as described in WAC 357-31-565, and accrued vacation leave if the employee qualifies under subsection (1)(e) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-435 Must employees use their own leave before using shared leave? Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and vacation leave that they have accrued before using shared leave. Employees who qualify for shared leave under WAC 357-31-390 (1)(e) must first use all compensatory time, recognition leave as described in

WAC 357-31-565, and vacation leave that they have accrued before using shared leave.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

(3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

AMENDATORY SECTION (Amending WSR 05-12-074, filed 5/27/05, effective 7/1/05)

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of ((~~his/her~~)) their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary ((~~date~~)), seniority, ((~~or~~)) and unbroken service dates ((~~is~~)) are not adjusted for periods of time spent on temporary layoff;

(b) ((~~An employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC~~)) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff; ((~~and~~))

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's probationary period ((~~or~~)), trial service period, or transition review period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for ((~~his/her~~)) their vacation leave balance; and

(c) Use of ((~~his/her~~)) their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

NEW SECTION

WAC 357-46-069 How is an employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

NEW SECTION

WAC 357-58-556 How is a WMS employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For WMS employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff

will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

NEW SECTION

WAC 357-52-012 Does an employee who has been temporarily laid off under chapter 32, Laws of 2010 have the right to appeal the temporary layoff? An employee who has been temporarily laid off under chapter 32, Laws of 2010 does not have the right to appeal the temporary layoff.

AMENDATORY SECTION (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee? An employer must provide the WMS employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of ((~~his/her~~)) their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 09-17-060, filed 8/13/09, effective 9/16/09)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) ((~~A WMS~~)) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) ((~~A WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC~~)) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff; ((~~and~~))

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for ((~~his/her~~)) their vacation leave balance; and

(c) Use of ((~~his/her~~)) their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's agency enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.