

WSR 11-19-047
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 13, 2011, 12:26 p.m., effective October 14, 2011]

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

Purpose: The department is amending WAC 388-412-0005, 388-412-0015, 388-412-0040, 388-446-0001, 388-446-0015, 388-446-0020, and 388-472-0005; and creating a new rule WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

These amendments are needed to incorporate federal regulations regarding the allowable use of supplemental nutrition assistance program benefits. These amendments provide definitions of trafficking, appropriate and legal use of food assistance benefits, and adopt federal regulations related to fraud, use of food assistance benefits, and penalties for trafficking of food assistance benefits.

These amendments also incorporate department standards for use of DSHS cash assistance benefits consistent with restrictions regarding the use of electronic benefit transfer (EBT) food and cash assistance by amending RCW 74.08.580 during the 2011 legislative session. These changes are necessary to carry out the purposes of DSHS cash and food assistance programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0005, 388-412-0015, 388-412-0040, 388-446-0001, 388-446-0015, 388-446-0020 and 388-472-0005; and new section WAC 388-412-0046.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and ESSB 5921.

Other Authority: 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and ESSB 5921 which was signed into law on June 15, 2011.

Adopted under notice filed as WSR 11-14-082 on July 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: September 9, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-015, filed 12/27/04, effective 1/27/05)

WAC 388-412-0005 General information about your cash benefits. (1) Each separate cash assistance unit (AU) gets a separate benefit amount. If several AUs live in the same house, each AU gets a separate benefit amount.

(2) You cannot receive the same type of benefits in:

(a) Two states in the same month; or

(b) Two AUs in the same month; unless

(c) You left the AU to live in a shelter for battered women and children. See WAC 388-408-0045.

(3) If you are married and both you and your spouse get ~~((general assistance))~~ Disability Lifeline, you and your spouse are one AU.

(4) Your grant is rounded down to the next whole dollar amount unless:

(a) You get a clothing and personal incidental (CPI) allowance; or

(b) Your benefits are reduced to pay an overpayment.

(5) We do not issue any cash benefits if you are eligible for less than ten dollars unless:

(a) You get a CPI allowance;

(b) Your benefits are reduced to pay an overpayment; or

(c) You get Supplemental Social Security (SSI) interim assistance payments.

(6) You may use your cash benefits to pay for basic living expenses as detailed under WAC 388-412-0046 (1)(c).

(7) You may not use your electronic benefit transfer (EBT) cards or cash obtained with EBT cards for any of the activities specified under WAC 388-412-0046 (1)(d).

(8) If you choose to withdraw your cash benefits using an automated teller machine (ATM), our EBT vendor may charge a fee for the transaction in addition to any charges by the bank or ATM owner.

AMENDATORY SECTION (Amending WSR 09-14-018, filed 6/22/09, effective 7/23/09)

WAC 388-412-0015 General information about your ~~((Basic Food))~~ food assistance allotments. (1) Your monthly ~~((Basic Food benefits are called an allotment. An allotment is the total dollar value of benefits your eligible assistance unit (AU) gets for a calendar month))~~ allotment under the Washington Basic Food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) programs is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) ~~((If your AU does not have countable income as described under WAC 388-450-0162, you get the maximum allotment for the number of eligible people in your AU under WAC 388-478-0060))~~ **How we determine monthly allotments:**

(a) We calculate your monthly allotment as described under WAC 388-450-0162 if your AU has income;

(b) If your AU does not have countable income you receive the maximum allotment for the number of eligible people in your AU under WAC 388-478-0060.

~~(3) ((If your AU has countable income, we calculate your monthly allotment as described under WAC 388-450-0162))~~

Prorated benefits in the first month - If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(4) ~~((If we determine you are eligible for Basic Food, your first month's benefits are from the date you applied for benefits through the end of the month of your application. If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055. This is called proration and is based on a thirty day month))~~

Combined allotment for first and second month's benefits - If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for food assistance, we issue both the first and second months benefits in one allotment if you are eligible for both months.

(5) ~~((If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for Basic Food, we issue both your first and second months benefits in one allotment if you are eligible for both months))~~ **Minimum allotment** - If your AU has one or two members, your monthly allotment will be at least sixteen dollars unless:

(a) It is the first month of your certification period;

(b) Your AU is eligible for only a partial month; and

(c) We reduced your first month's allotment below sixteen dollars based on the date you became eligible for food assistance under WAC 388-406-0055.

(6) ~~((If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.~~

(7) If your AU has one or two members, your monthly allotment will be at least sixteen dollars unless:

(a) It is the first month of your certification period;

(b) Your AU is eligible for only a partial month; and

(e) ~~We reduced your first month's allotment below sixteen dollars based on the date you became eligible for Basic Food under WAC 388-406-0055))~~ **Use of food assistance benefits** - Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 09-21-009, filed 10/8/09, effective 11/15/09)

WAC 388-412-0040 Can I get my benefits replaced?

Under certain conditions, we may replace your benefits.

(1) You may get your EBT cash and/or food assistance benefits replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) ~~((Both your))~~ The EBT card ~~((and personal identification number (PIN) are))~~ mailed to you is stolen from the mail; you never had the ability to use the benefits; and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the fifteenth of the month and the facility does not have enough ~~((Basic Food))~~ food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake ~~((along with your state benefits));~~ or

(e) ~~((Your))~~ The food that ~~((was))~~ your household purchased with ~~((Basic Food))~~ food assistance benefits was destroyed in a household disaster or misfortune.

~~((2))~~ If you want a replacement) (i) For us to replace your benefits, you must report the loss to ~~((your local office))~~ the department within ten days from the date of the loss.

~~((3))~~ For Basic Food,) (ii) We replace the amount of your loss, up to a one-month benefit amount.

~~((4))~~ (2) We will not replace your benefits if your loss is for a reason other than those listed in subsection (1) above ~~((or))~~ if:

(a) We decided that your request is fraudulent;

(b) Your ~~((Basic Food))~~ food assistance benefits were lost, stolen or misplaced after you received them;

(c) You already ~~((got))~~ received two ~~((countable))~~ replacements ~~((of Basic Food benefits))~~ for food destroyed in household disaster or misfortune within the last five months; or

(d) You ~~((got))~~ received disaster ~~((food stamp))~~ supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for ~~((Basic Food))~~ food assistance.

~~((5))~~ Your replacement does not count if:

(a) Your benefits are returned to us; or

~~We replaced your benefits because we made an error))~~ (3) **EBT cards.** It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

NEW SECTION

WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment or school related items; and
- (ix) Other necessary incidentals and items.

(d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
 - (A) The purchase of lottery tickets;
 - (B) The purchase of pull tabs;
 - (C) Use of punch boards;
 - (D) Purchase of bingo cards;
 - (E) Betting on horse racing;
 - (F) Participating in casino games; and
 - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.
- (ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;
- (iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;
- (iv) Purchase any alcoholic items regulated under Title 66 RCW;
- (v) Purchase or participate in any activities in any of the following locations:
 - (A) Taverns licensed under RCW 66.24.330;
 - (B) Beer/wine specialty stores licensed under RCW 66.24.371;
 - (C) Nightclubs licensed under RCW 66.24.600;
 - (D) Contract liquor stores defined under RCW 66.04.010;
 - (E) Bail bond agencies regulated under chapter 18.185 RCW;
 - (F) Gambling establishments licensed under chapter 9.46 RCW;
 - (G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;
 - (H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

- (i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits including those from the Basic Food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA) help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

- (i) Breads and cereals;
- (ii) Fruits and vegetables;
- (iii) Cheese, milk, and other dairy products;
- (iv) Meats, fish, poultry, and eggs;
- (v) Most other food items that are not prepared hot foods; and
- (vi) Seeds and plants that produce food.

(d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits on your EBT card for any purpose other than to buy food for eligible household members.

(iii) Exchange your food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits for cash, drugs, weapons or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate your EBT card or any benefits to any person or entity.

(v) Sell or trade any food that was purchased using your food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vi) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(e) If you intentionally misuse your food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-446-0001 (~~Cash and medical assistance~~)
When does the department refer a cash, food assistance or medical case for prosecution for fraud? (1) ~~(All cash or medical assistance cases in which substantial evidence is found supporting a finding of fraud are referred to the county prosecuting attorney. The prosecuting attorney's office determines which cases are subject to criminal prosecution.~~

~~(2) An applicant or recipient is suspected of committing fraud if intentional misstatement or failure to reveal information affecting eligibility results in an overpayment.)~~ We consider it fraud if you misrepresent your circumstances in order to be eligible for or to receive more benefits than you would receive based on your actual circumstances. This includes misrepresenting:

- (a) Who is in the household;
- (b) The income of people in your assistance unit;
- (c) Your living expenses; or
- (d) Other circumstances that impact your eligibility and monthly benefits.

(2) We suspect fraud if it appears that you received more benefits than you should have and it appears that you:

- (a) Made an intentional misstatement about your circumstances that caused the incorrect benefits; or
- (b) Intentionally failed to reveal information that impacts your eligibility.

(3) If we receive a report of fraud, we actively investigate the circumstances to determine if there is substantial evidence to support a finding of fraud. This includes referring the case for investigation by the office of fraud and accountability.

(4) If we have substantial evidence to support a finding of fraud for cash, food assistance or medical, we refer the case for prosecution. The prosecuting attorney's office decides which cases they will pursue for prosecution.

AMENDATORY SECTION (Amending WSR 05-23-082, filed 11/15/05, effective 1/1/06)

WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearings (ADH) for (~~Basic Food~~) food assistance. (1) An intentional program violation (IPV) is ~~(defined as)~~ an act in which ~~(a person)~~ someone intentionally:

~~(a) (~~Makes a false or misleading statement;~~)~~ Misrepresents, conceals or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow. This includes making a false statement regarding household circumstances.

~~(b) (~~Misrepresents, conceals or withholds facts; or~~~~

~~(c) (~~Acts in violation of the Food Stamp Act, the Food Stamp Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food~~)~~ Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any state statute relating to the use, presenta-

tion, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

~~(2) (~~Basic Food clients suspected of committing~~)~~ If we suspect someone has committed an IPV (~~are subject to referral~~) we refer their case for an administrative disqualification hearing (ADH), if:

~~(a) The suspected IPV causes an over issuance of four hundred fifty dollars or more; or~~

~~(b) The suspected IPV is due to the trafficking of food benefits; and~~

~~(c) The person has not been referred for criminal proceedings(~~;~~ and~~

~~(d) The person resides in Washington state, at the time of the referral; or~~

~~(e) The person resides outside Washington state, but is within one hour's reasonable drive to a CSO).~~

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A ~~(client who)~~ person suspected of an IPV can choose to waive their right to an ADH by signing a disqualification consent agreement that waives their right to the hearing and accepts the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, (~~is referred~~) we refer them for an ADH when the act of suspected violation occurred:

~~(a) After (~~the department~~) we~~ mailed the disqualification notice to the client for the most recent IPV; or

~~(b) After criminal proceedings for the most recent IPV are concluded.~~

~~(5) A person suspected of IPV is entitled to receive notice of an ADH at least thirty days in advance of the hearing date. The)~~ (6) When we suspect someone has committed an IPV, we refer their case for an administrative disqualification hearing (ADH). The office of administrative hearings (OAH) sends them notice of an ADH at least thirty days in advance of the hearing date. OAH sends the notice (~~is sent~~)

by certified mail, or (~~provided to the client by~~) personal service (~~and~~). The notice will contain the following information:

~~(a) The date, time, and place of the hearing;~~

~~(b) The charges against the (~~individual~~) person;~~

~~(c) A summary of the evidence, and how and where (~~the~~) they may examine the evidence (~~can be examined~~);~~

~~(d) A warning that a decision will be based (~~solely~~) entirely on the evidence (~~provided by~~) the department(~~;~~) provides if (~~the individual~~) they fail(~~s~~) to appear at the hearing;~~

~~(e) A statement that the (~~individual~~) person has ten days from the date of the scheduled hearing to show good cause for (~~failure to appear at~~) failing to attend the hearing and to (~~request rescheduling~~) ask for a new hearing date;~~

~~(f) A warning that a determination of IPV will result in a disqualification period; and~~

~~(g) A statement that if we schedule a telephone hearing (~~is scheduled~~), (~~the individual~~) they can request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.~~

~~((6))~~ (7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative shall have the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

~~((7))~~ (9) The (hearing will be conducted and a decision rendered) administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be re-instated.

~~((8))~~ (10) We may change a scheduled telephone hearing (may be changed) to an in-person hearing if this is requested (one) by the person or department representative at least a week (or more) in advance. (If requested) The person requesting a change less than one week in advance ((the person)) must show good cause for the requested change.

~~((9))~~ (11) The ALJ issues a final decision as specified in WAC ~~((388-02-0215(5) and WAC 388-02-0527))~~ 388-02-0215 through 388-02-0525. The decision determines whether the department ~~((establishes))~~ had established with clear and convincing evidence that the person committed and intended to commit an IPV.

~~((10))~~ (12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

~~((11) A client's)~~ (13) We will not implement a disqualification ((is not implemented)) and continue benefits ((continue)) at the current amount ((when)) if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

~~((12) An administrative disqualification hearing and a regular hearing can be combined when the cause for both hearings is related.))~~

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-446-0020 What penalties will I receive if I break a food assistance ((disqualification penalties)) rule on purpose? (1) ~~((Disqualification penalties apply only to the person or persons found to have committed an intentional program violation (IPV) as follows:~~

~~((a) If the intentional program violation occurred in whole or in part after the household was notified of the following penalties:~~

~~((i) Twelve months for the first violation;~~

~~((ii) Twenty-four months for the second violation;~~

~~((iii) Permanently for the third violation.~~

~~((b) If the violation ended before the household was notified of the penalties in subsection (1)(a) of this section:~~

~~((i) Six months for the first violation;~~

~~((ii) Twelve months for the second violation;~~

~~((iii) Permanently for the third violation.~~

~~((2) The disqualification and penalty period for a person convicted in another state stays in effect until satisfied regardless of where a person moves.~~

~~((3) Multiple program violations are considered as one violation when determining the penalty for disqualification when the violations occurred before the department notified the household of the penalties, as described in subsection (1), (4) and (5) of this section.~~

~~((4) Disqualification penalties for persons convicted by a federal, state, or local court of trading or receiving food coupons for a controlled substance are:~~

~~((a) Two years for a first conviction; and~~

~~((b) Permanently for a second conviction.~~

~~((5) A first conviction by federal, state, or local court permanently disqualifies persons who:~~

~~((a) Trade or receive food coupons for firearms, ammunition, or explosives; or~~

~~((b) Knowingly buy, sell, trade, or present for redemption food coupons totalling five hundred dollars or more in violation of section 15 (b) and (c) of the Food Stamp Act of 1977, as amended.~~

~~((6) Persons convicted of providing false identification or residency information to receive multiple coupon benefits are disqualified for ten years.~~

~~((7) When a court convicts a person of an IPV, the disqualification penalties specified in subsection (1) through (5) apply as follows;~~

~~((a) In addition to any civil or criminal penalties; and~~

~~((b) Within forty five days of the date of conviction; unless~~

~~((c) Contrary to the court order.~~

~~((8) Disqualification penalties are applied after notifying the household of the disqualification, the effective date, the amount of benefits the household will receive during the disqualification period and the need to reapply when the certification period expires.~~

~~((9) Even though only the individual is disqualified, the food assistance household is responsible for making restitution for the amount of any overpayment)) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:~~

~~((a) Washington Basic Food program or Basic Food;~~

~~((b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;~~

~~((c) Transitional food assistance (TFA) under chapter 388-489 WAC; and~~

~~((d) The state-funded food assistance program (FAP) for legal immigrants.~~

~~((2) You will have an IPV if we have shown that you have committed an IPV in any of the following three ways:~~

~~((a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;~~

(b) You signed a disqualification consent agreement that waives your right to an administrative disqualification hearing and accepts the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

(3) We only apply a disqualification penalty to the person or persons who have committed an IPV. People who commit an IPV are disqualified from all food assistance benefits listed in subsection (1) of this section. If you commit an IPV you will not be eligible for food assistance:

(a) For a period of twelve months for the first violation;

(b) For a period of twenty-four months for the second violation;

(c) Permanently for the third violation.

(4) **Special penalties for certain crimes** - If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs** - If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

(i) For a period of twenty-four months for a first conviction; and

(ii) Permanently for a second violation.

(b) **Weapons** - If you are convicted in a federal, state or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking** - If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification** - If you are convicted in a federal, state, or local court of providing false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance for ten years on the first offense.

(e) **Receiving benefits in more than one state** - If you are convicted in a federal, state, or local court of providing false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance for ten years on the first offense.

(5) When we start a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start:

(a) **ADH or consent agreement** - If you were found to have committed an IPV in an administrative disqualification hearing or you signed a consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court** - If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or criminal penalties. We disqualify you from food assistance

within forty-five days of the court order unless this timing conflicts with the court order.

(6) **Disqualifications apply in all states** - If you have an IPV disqualification this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

(7) Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

AMENDATORY SECTION (Amending WSR 11-07-014, filed 3/8/11, effective 4/8/11)

WAC 388-472-0005 What are my rights and responsibilities? For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, food or medical assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

~~((e))~~ (d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

~~((f))~~ (e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

(ii) If you are pregnant and otherwise eligible, you get medical within fifteen working days~~((-))~~;

(iii) Disability lifeline (DL), alcohol or drug addiction treatment (ADATSA), or medical assistance may take up to forty-five days; and

(iv) Medical assistance requiring a disability decision may take up to sixty days.

~~((g))~~ (f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

~~((f))~~ (g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

~~((g))~~ (h) Ask us not to collect child support or medical support if you fear the noncustodial parent may harm you, your children, or the children in your care;

~~((h))~~ (i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shut-off, if you get TANF;

~~((i))~~ (j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

~~((j))~~ (k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

~~((k))~~ (l) Have interpreter or translator services given to you at no cost and without delay;

~~((l))~~ (m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

~~((m))~~ (n) Get help from us to register to vote.

(2) If you get cash, food, or medical assistance, you are responsible to:

(a) Tell us if you are pregnant, in need of immediate medical care, experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support or medical support unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) Give your ~~((medical identification card or letter of eligibility from us))~~ Provider One services card to your medical care provider; ~~((and))~~

(k) Cooperate with the quality control review process;

(l) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

(m) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

WSR 11-20-003

PERMANENT RULES

BOARD OF INDUSTRIAL INSURANCE APPEALS

[Filed September 21, 2011, 2:16 p.m., effective October 22, 2011]

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

Purpose: To revise the board's rules of practice and procedure by amending WAC 263-12-050 and 263-12-059, regarding procedure regarding motions to stay abatement in WISHA appeals. Changes are necessary to meet current business needs and to meet the legislative mandate for enacting rules to implement ESSB 5068, 2011 legislative session, effective July 22, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 263-12-050 and 263-12-059.

Statutory Authority for Adoption: RCW 51.52.020.

Adopted under notice filed as WSR 11-16-010 on July 22, 2011.

Changes Other than Editing from Proposed to Adopted Version: WAC 263-12-050: In the proposed addition subsection (7), all instances (3) of the term "calendar" days are changed to "working" days.

In paragraph one, after "any affected employees," the text "all documents supporting the request for a stay of the abatement of the violation(s). The supporting documents shall conform to rule 56(e) of the Superior Court Civil Rules of the State of Washington and" is replaced with "affidavits and documents supporting the request for a stay of the abatement of the violation(s). Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall."

In paragraph two, beginning at sentence two, after "any affected employees shall file," the text "all supporting documents opposing the motion to stay the abatement. The" is replaced with "affidavits and documents supporting the request for a stay of the abatement of the violation(s). Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and."

WAC 263-12-059: The proposed entire third paragraph is removed as a separate paragraph and the language is inserted immediately following the first sentence of the last paragraph.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: September 21, 2010 [2011].

David E. Threedy
Chairperson

AMENDATORY SECTION (Amending WSR 04-16-009, filed 7/22/04, effective 8/22/04)

WAC 263-12-050 Contents of notice of appeal. The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General rule.** In all appeals, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

(g) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true;

(h) The signature of the appealing party or the party's representative.

(2) **Industrial insurance appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal should also contain:

(a) The name and address of the injured worker;

(b) The name and address of the worker's employer at the time the injury occurred;

(c) In the case of occupational disease, the name and address of all employers in whose employment the worker

was allegedly exposed to conditions that gave rise to the occupational disease;

(d) The nature of the injury or occupational disease;

(e) The time when and the place where the injury occurred or the occupational disease arose.

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal should also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal should also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due.

(5) **LEOFF and public employee death benefit appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Firefighters' Retirement System (chapter 41.26 RCW), the notice of appeal should also contain:

(a) The time when and the place where the death occurred; and

(b) The name and address of the decedent's employer at the time the injury occurred.

(6) **Asbestos certification appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal should also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA appeals.** In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), where the employer has moved for a stay of abatement pursuant to RCW 49.17.140, the employer shall, within seven working days of the date of the board's notice of filing of appeal, file with the board, the department, and any affected employees affidavits and documents supporting the request for a stay of the abatement of the violation(s). Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing: (1) whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and (2) whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

If an employer fails to file the supporting documents within seven working days of the date of the board's notice of filing of appeal, the request for a stay of the abatement of the violation(s) will be denied. Within fourteen working days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file affidavits and documents supporting the request for a stay of the abatement of the violation(s). Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing: (1) whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of re-determination; and (2) whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s);

(c) A statement certifying compliance with WAC 263-12-059.

(i) In appeals where the employer has made or renewed its request for a stay of the abatement of the violation(s) alleged in the citation and notice or corrective notice of re-determination, if the employer fails to comply with WAC 263-12-059, the motion for a stay of the abatement of the violation(s) will be denied.

(8) **Other safety appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) If applicable, a statement certifying compliance with WAC 263-12-059.

AMENDATORY SECTION (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act—Notice to interested employees. In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial

Safety and Health Act, the employer shall give notice of such appeal to its employees by either: (1) Providing copies of the appeal to each employee member of the employer's safety committee; or (2) by posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of receipt of the board's notice acknowledging receipt of the appeal. In appeals where the employer has moved for a stay of the abatement of the violation(s) alleged in the citation and notice or corrective notice of re-determination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer. If the employer fails to provide the names and addresses of union representatives at the time of filing of the notice of appeal, the motion to stay the abatement of the violation(s) will be denied. Additionally, the employer shall include with the notice of appeal a certification that the employer has posted the notice of appeal and the motion to stay the abatement of the violation(s) in a conspicuous place at the work site at which the alleged violation(s) occurred. If the employer fails to file a certification of the posting of the notice of appeal and the motion to stay the abatement of the violation(s), the motion to stay the abatement of the violation(s) will be denied. Any posting shall remain during the pendency of the appeal. If notice as required by this section is not possible the employer shall advise the board or its designee of the reasons why notice cannot be accomplished. If the board, or its designee, accepts the impossibility of the required notice it will prescribe the terms and conditions of a substitute notice procedure reasonably calculated to give notice to affected employees.

WSR 11-20-004

PERMANENT RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed September 21, 2011, 2:52 p.m., effective October 22, 2011]

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

Purpose: To enact procedures for challenging board determinations made pursuant to WAC 363-116-080 as to whether a trainee should be issued a pilot license. These include express notice requirements, procedures for any adjudicative proceeding and prehearing discovery, and the scope of any hearing and related procedures.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 11-13-115 on June 21, 2011.

Changes Other than Editing from Proposed to Adopted Version: There were no changes other than editorial.

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

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

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

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

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

Date Adopted: September 19, 2011.

Peggy Larson
Executive Director

NEW SECTION

WAC 363-116-086 Challenges to board actions concerning licensing determinations and appeal procedures. This section shall apply to all proceedings involving a board determination made pursuant to WAC 363-116-080:

(1) Pilot trainees who enter a training program as provided in this chapter shall provide the board with an address to be used for notification purposes. Such address shall be a place at which mail is delivered. In addition, a pilot trainee may provide the board with other means of contact such as telephone numbers and/or e-mail addresses. It will be the responsibility of the pilot trainee to ensure that the board has a current mailing address at all times. The mailing address will be considered the primary means of notice by the board. Notice delivered to the address provided by the pilot trainee will be considered received by the pilot trainee for the purpose of receipt of notification of the board's decision to deny a pilot license or extend a training program as provided in subsection (2) of this section.

(2) A pilot trainee who is denied a license or continued in his or her training program, pursuant to a decision rendered under WAC 363-116-080(5), shall be notified of the board's determination, in writing, by the chair of the board as soon as practicable. The pilot trainee shall have twenty days from which notice of the decision is served to file a notice of appeal of the board's decision with the board, pursuant to WAC 10-08-110 and 10-08-211. The board's decision will become a final order upon expiration of twenty days from the date notice is served, unless notice of appeal has been filed prior to that time. Upon the filing of the notice of appeal, the chair of the board shall appoint a presiding officer, who shall conduct the hearing and issue an initial order pursuant to chapter 34.05 RCW.

(3) Any hearing conducted pursuant to a request for review as indicated in subsection (2) of this section shall be conducted pursuant to the rules set forth in chapters 10-08 and 363-11 WAC and this section. In the event of a conflict, this section shall control.

(a) The board and the trainee evaluation committee shall be required to produce no more than a total of two fact witnesses and no more than one expert witness in connection with any hearing pursuant to this section, unless the board's chair, in his or her sole discretion, believes additional witnesses are necessary to present its case. This limitation shall apply to the hearing and any prehearing discovery.

(b) The board has determined, in its discretion, that because each pilot trainee brings different skill sets to his or her training program as a result of their prior experience, and the trainee evaluation committee develops an individually tailored training program based upon that pilot trainee's skill set and prior experience; comparisons between pilot trainees' performances in their respective training program are not relevant when assessing the pilot trainee's performance which is the subject of a notice of appeal and/or petition for review hereunder. Any documentation or testimony concerning the performance of other pilot trainees in their training program shall not be considered during any proceeding involved in the review process and shall not be submitted or solicited as evidence in any hearing under this section, nor shall it be submitted or solicited as evidence in any discovery deposition, nor shall it be included in the board's record of proceedings or any petition for review.

(c) The scope of the hearing shall be limited to the validity of the training and evaluation process. The grounds for appeal shall be limited to the following issues:

(i) Does the training and evaluation process comport with accepted psychometric and industrial/organizational psychology principles and evaluation?

(ii) Is the board's training and evaluation process a valid and reliable measurement system meeting all criteria of formative and summative assessment?

(iii) Is the training program job related?

(iv) Was the board's decision made pursuant to WAC 363-116-080(5) arbitrary and capricious?

(d) The presiding officer shall issue an initial order at the conclusion of the hearing in conformance with the requirements of chapter 34.05 RCW and WAC 10-08-210.

(4) Any petition for review of the initial order shall be filed in conformance with WAC 10-08-211. The chair of the board shall then appoint a "reviewing officer" who shall issue a final order. The standard of review by the reviewing officer shall be the same as that set forth in subsection (3)(c) of this section.

**WSR 11-20-013
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed September 22, 2011, 1:13 p.m., effective November 1, 2011]

Effective Date of Rule: November 1, 2011.

Purpose: To update our adoption reference; to clarify notification applicability terms and exemptions; and to correct an inaccurate reference.

Citation of Existing Rules Affected by this Order:
Amending Regulation I, Sections 6.01, 6.03, and 6.04.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-16-090 on August 2, 2011.

Changes Other than Editing from Proposed to Adopted Version: The effective date for WAC 173-400-720 was changed from April 1, 2011, to September 10, 2011. (+ Ecology fees) was added to an item in Section 6.04(a).

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

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

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

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

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

Date Adopted: September 22, 2011.

Craig Kenworthy
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-21 issue of the Register.

WSR 11-20-014
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed September 22, 2011, 1:14 p.m., effective November 1, 2011]

Effective Date of Rule: November 1, 2011.

Purpose: To adjust the maximum civil penalty amount for inflation and update the federal regulation reference date.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-16-086 on August 2, 2011.

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

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

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

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

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

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

Date Adopted: September 22, 2011.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$16,609.00)~~) \$17,057.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than (~~(\$16,609.00)~~) \$17,057.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION
REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ~~(2010)~~ 2011.

WSR 11-20-021
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:24 p.m., effective October 24, 2011]

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

Purpose: Housekeeping to update titles, addresses, and internal references.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-01-006, 132Q-01-020, and 132Q-01-030.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-088 on July 1, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-01-006 Organization and operation. (1) Organization: Washington State Community College District 17, Community Colleges of Spokane including Spokane Community College, Spokane Falls Community College and the Institute for Extended Learning, is established in Title 28B RCW as a public institution of higher education. District 17 is governed by a five-member board of trustees, appointed by the governor. The board employs a chancellor (~~chief executive officer~~) who establishes the structure of the administration.

(2) Operation: The administrative office is located at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington 99217-6000. Spokane Community College is located at 2000 North Greene Street, Spokane, Washington 99217-5499; Spokane Falls Community College is located at 3410 West Fort George Wright Drive, Spokane, Washington 99224-5288; the Institute for Extended Learning is located at ~~(3305)~~ 2917 West Fort George Wright Drive, Spokane, Washington 99224-~~(5228)~~ 5202. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, except for legal holidays. During summer months, sections of the district may operate on an alternate schedule and throughout the year, evening services are provided. Specific information is available through each campus.

(3) Additional and detailed information concerning the educational offerings may be obtained from the college catalog, available on the Community Colleges of Spokane web site and at various locations including college libraries, ~~(cashier's)~~ admissions, and counseling offices ~~(and district web site)~~.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-01-020 Regular meetings of the board of trustees. The board of trustees of Washington State Community College District 17 (Community Colleges of Spokane) shall hold regular monthly meetings according to a schedule including place, time and date filed with the Washington state code reviser on or before January 1 of each year for publication in the Washington State Register. Notice of any change from such meeting schedule shall be published in the Wash-

ington State Register at least twenty days prior to the rescheduled meeting date.

All regular meetings of the board of trustees shall be held at ~~((2000 North Greene Street))~~ 3305 W. Fort George Wright Drive, Spokane, Washington, ~~((99217-5499))~~ 99217-5228, unless otherwise announced. Information about specific meeting places and times may be obtained from the office of the board.

AMENDATORY SECTION (Amending Resolution No. 25, filed 1/24/86)

WAC 132Q-01-030 Special meetings of the board of trustees. Special meetings of the board of trustees may be called by the chairperson of the board or by a majority of the members of the board by written notice delivered by e-mail, mail or ~~((by))~~ in person to each member at least twenty-four hours before the time of such meeting. Such notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings. Notice of such special meetings also shall be provided twenty-four hours prior to such meetings to each local newspaper of general circulation and to each local radio and television station which has on file a written request to be notified of such special meetings or of all meetings of the board.

WSR 11-20-022
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:25 p.m., effective October 24, 2011]

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

Purpose: To ensure compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

Citation of Existing Rules Affected by this Order: Repealing WAC 132Q-02-350 and 132Q-02-410; and amending WAC 132Q-02-340, 132Q-02-360, 132Q-02-370, and 132Q-02-380.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-089 on July 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 3, Amended 4, Repealed 2; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

NEW SECTION

WAC 132Q-02-335 Purpose. The purpose of this chapter is to establish rules that comply with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA), located at Title 20 United States Code. FERPA provides students with the following rights:

(1) The right to inspect and review their education records;

(2) The right to seek amendment of their education records to correct information which they believe is inaccurate, misleading or otherwise in violation of student privacy rights;

(3) The right to consent to disclosure of personally identifiable information, except for disclosure to school officials with a legitimate educational interest and except to the extent FERPA authorizes disclosure without consent; and

(4) The right to be informed annually of their rights under the act if they are currently in attendance.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-02-340 Definitions. The following definitions ((in this chapter are those in WAC 132Q 30-105.)) shall apply in interpreting these regulations:

(1) Directory information: Information contained in an educational record of a student that would not be generally considered harmful or an invasion of the privacy if disclosed. It includes, but is not limited to: The student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended by the student.

(2) Educational record: Those records, except as provided otherwise in (b) of this subsection, directly related to a student and maintained by the college or a party acting for the college.

(a) Education records include, but are not limited to:

(i) Official transcripts of course taken and grade received; records relating to prior educational experience; and admission records;

(ii) Tuition and payment records;

(iii) Student disciplinary records;

(iv) Course records (e.g., examinations, term papers, essays, etc.);

(v) Employment records based on student status (e.g., work study).

(b) Educational records do not include:

(i) Records of instruction, supervisory, and administrative personnel and educational personnel which are in the sole possession of the originator and which are not accessible

or revealed to any other person except a substitute or designee:

(ii) Records created and maintained by campus security for law enforcement purposes;

(iii) In the case of persons who are employed by an educational agency or institution, but who are not in attendance at such agency or institution, records made and maintained in the normal course of business, which relate exclusively to such person's employment, are not available for use for any other purpose;

(iv) Records containing medical or psychological information are not available to anyone other than the individual(s) providing treatment; however, such records may be personally reviewed by a physician or other appropriate professional upon the student's written consent.

(3) Legitimate educational interest: If the information requested by the school official is necessary for the official to perform a task specified in his/her position description or contract agreement including: The performance of a task related to a student's education; the performance of a task related to the discipline of a student; the provision of a service or benefit related to the student or student's family, such as health education, counseling, advising, student employment, financial aid, or other student service related assistance; the maintenance of the safety and security of the campus; and/or the provision of legal assistance regarding a student matter.

(4) Parent: Defined as a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(5) Personal identifiable information: This includes, but is not limited to: Student's name, the name of the student's parent or other family member; the address of the student or the student's family; a personal identifier such as the student's Social Security number or student identification number; a list of personal characteristics that would make the student's identity easily traceable; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

(6) Record: Any information recorded in any way, including, but not limited to: Handwriting, print, computer media, video or audio media, microfilm and microfiche.

(7) School official: All of the following who act in the student's educational interests within the limitations of their need to know:

(a) A person employed by Community Colleges of Spokane in an administrative, supervisory, academic, research, support staff, law enforcement or health care service position;

(b) A person serving on the CCS board of trustees;

(c) A student serving on an official CCS committee or assisting another school official in fulfilling their professional responsibilities (examples include, but are not limited to, service on a disciplinary committee and work study students); and

(d) A contractor, consultant, volunteer or other party with whom CCS has contracted to provide a service and/or to assist another school official in conducting official business (examples include, but are not limited to: An attorney, an

auditor, a collection agency, or the National Student Clearinghouse, an agency which acts as a clearinghouse for student loan deferment reporting).

(8) Student: Any person, regardless of age, who is or has been officially registered in attendance at CCS at any location at which CCS offers programs/courses with respect to whom CCS maintains educational records.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-02-360 Education records—Student's right to inspect. ~~((1))~~ A student has the right to inspect and review his/her education records.

~~((a))~~ For purposes of this section the term "education records" means those records, files, documents, and other materials which contain information directly related to a student, including records regarding the employment of a student when such employment is a result of, and directly related to, student status:

(b) The term "education records" does not include:

(i) Records of instructional, supervisory and administrative personnel and educational personnel which are in the sole possession of the originator and which are not accessible or revealed to any other person except a substitute or designee.

(ii) Records of the campus security department, which are kept apart from those records described in subsection (a) and which are maintained solely for law enforcement purposes are not made available to persons other than law enforcement officials of the same jurisdiction.

(iii) In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business, which relate exclusively to such person's employment, are not available for use for any other purpose.

(iv) Student records containing medical/psychological information are not available to anyone other than the individual(s) providing treatment; however, such records may be personally reviewed by a physician or other appropriate professional upon the student's written consent.

~~(2)(a))~~ (1) Recommendations, evaluations or comments concerning a student that are provided in confidence, either expressed or implied, as between the author and the recipient, shall be made available to the student, except as provided in ~~((b), (c) and (d))~~ (a), (b), and (c) of this subsection. The college may require proof of identification, such as a driver's license, college student identification card, or other photographic identification.

~~((b))~~ (a) The student may specifically release his or her right to review where the information consists only of confidential recommendations respecting:

(i) Admission to any educational institution; or

(ii) An application for employment~~((:))~~; or

(iii) Receipt of an honor or honorary recognition.

~~((c))~~ (b) A student's waiver of his or her right to access confidential statements shall apply only if:

(i) The student is, upon request, notified of the names of person(s) making confidential statements concerning him or her; and

(ii) Such confidential statements are used solely for the purpose for which they were originally intended; and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from the college/instructional unit.

~~((c))~~ (c) Recommendations, evaluations or comments concerning a student that have been provided in confidence, either expressed or implied, as between the author and the recipient, prior to January 1, 1975, shall not be subject to release under ~~((a)-(f))~~ this subsection. Such records shall remain confidential and shall be released only with the consent of the author. The institution shall use these records only for the purpose for which they were originally intended.

~~((2))~~ (2) Where requested records or data include information on more than one student, the student shall be entitled to receive or be informed of only that part of the record or data that pertains to himself/herself.

~~((3))~~ (3) The office of the ~~((chief student services officer))~~ registrar is the official custodian of academic records; and, therefore, is the only office who may issue an official transcript of the student's academic record.

~~((4))~~ (4) Student educational records may be destroyed in accordance with a department's routine retention schedule. In no case will any record which is requested by a student for review in accordance with this section be removed or destroyed prior to providing the student access.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-02-370 Records requests and appeals.

(1) A request by a student for review of information shall be made in writing to the college individual(s) or office(s) having custody of the particular record. ~~((Any challenge to the contents of educational records shall be addressed by means of a brief adjudicative proceeding.))~~

(a) The college may refuse to provide copies of education records, including transcripts and diplomas in the following circumstances:

(i) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected;

(ii) If the student has outstanding debts owed to the college, so that the college may facilitate collection of such debts; and/or

(iii) If disciplinary action is pending or sanctions are not completed.

(b) The college must provide copies of the educational record, subject to the provision of this subsection in the following circumstances:

(i) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(ii) When records are released pursuant to a student's consent and the student requests copies; and/or

(c) When the records are transferred to another education institution where the student seeks to attend or intends to enroll and the student requests copies.

(2) An individual(s) or office(s) must respond to a request for education records within a reasonable period of time, but in no case more than forty-five days after the request has been made. A college individual(s) or office(s) which is unable to comply with a student's request within the above-stated time period shall inform the student of that fact and the reason(s) in writing.

~~((3))~~ (3) ~~((a))~~ A student who feels that his/her request has not been properly answered by a particular individual(s) or office(s) should contact the chief student services officer.

~~((b))~~ (a) In cases where a student is dissatisfied after consulting with the chief student services officer, the student may appeal to the college records committee. The college's records committee shall render its decision within a reasonable period of time. In all cases, the decision of the college's records committee is final.

~~((c))~~ (b) In no case shall any request for review by a student be considered by the college's records committee, which has not been filed with that body in writing within ninety days from the date of the initial request to the custodian of the record.

~~((d))~~ (c) The college's records committee shall not review any matter regarding the appropriateness of official academic grades.

NEW SECTION

WAC 132Q-02-374 Amendment of records. If a student believes his/her educational records contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, the student may ask the college to amend the record. Requests for amendment must be submitted to college individual(s) or office(s) having custody of the particular record. The college individual(s) or office(s) having custody of the particular record will review the request and may consult other college personnel who participated in the creation of the record to determine whether to grant the request for amendment.

(1) If the college decides to grant the student's request, the college shall amend the education record and will inform the student of the action taken. Such notification will be in writing and will be made within a reasonable time.

(2) If the college decides not to amend the education record as requested, the college will notify the student in writing within a reasonable time after receiving the request for amendment.

(3) If a student wants a hearing, the student must make a written request within ninety days of the date of the denial. The request shall be submitted to the college individual(s) or office(s) having custody of the particular record and must identify why the student believes the information contained in the education record(s) is inaccurate, misleading or in violation of the privacy rights of the student.

NEW SECTION

WAC 132Q-02-377 Disclosure of education records requiring consent. Students shall provide a signed and dated written consent before the college discloses personally identifiable information from a student's educational records. The written consent must:

- (1) Specify the records that may be disclosed;
- (2) State the purpose of the disclosure; and
- (3) Identify the party or class of parties to whom the disclosure may be made.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-02-380 ((Release of personally identifiable records.)) Disclosures authorized without consent.
 (((H))) The college shall not permit access to or the release of education records or personally identifiable information contained therein, other than "directory information," without the written consent of the student, to any party other than the following:

~~((a)) College personnel and students when officially appointed to a faculty council or administrative committee, when the information is required for a legitimate educational interest within the performance of their responsibilities to the college, with the understanding that its use will be strictly limited to the performance of those responsibilities.~~

~~(b) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federally supported or state supported educational program or in connection with the enforcement of the federal or state legal requirements which relate to such programs. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parent(s) to other than those officials and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation or enforcement of legal requirements.~~

~~(e)) (1) Agencies or ((individual's)) organizations requesting information in connection with a student's application for or receipt of financial aid((-~~

~~(d) Organizations conducting studies for or on behalf of the college for purposes of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students by persons other than the representatives of such organizations, and such information will be destroyed when no longer needed for the purposes for which it was provided.~~

~~(e) Accrediting organizations in order to carry out their accrediting functions.~~

~~(f) Any person or entity designated by judicial order or lawfully issued subpoena, upon condition that the student is notified of all such orders or subpoenas in advance of the compliance unless the court or other issuing agency orders the college not to notify the student before compliance with the subpoena. The college president, the president's designee, or office(s) receiving a subpoena or judicial order for education records should immediately notify the attorney general.~~

~~(g) Parents transfer their rights under FERPA to their child when he/she reaches 18 years of age or attends an institution of postsecondary education. Parents of college students, who request to review their "adult child's" record, must provide documented "dependency status" under Internal Revenue Service (IRS) regulations or have written consent from the student. The final decision whether or not to disclose~~

~~information about students to their parents is a matter of the institution's policy.~~

~~(2) Where the consent of a student is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:~~

~~(a) A specification of the records to be released;~~

~~(b) The reasons for such release; and~~

~~(c) The names of the parties to whom such records will be released.~~

~~(3) In cases where records are made available without student release as permitted by subsection (1)(b), (c), (d), (e) and (f), the college shall maintain a record kept with the education record released which will indicate the parties which have requested or obtained access to a student's records maintained by the college and which will indicate the legitimate interest of the investigating party. Releases in accordance with subsection (1)(a) need not be recorded.~~

~~(4) Personally identifiable education records released to third parties, with or without student consent, shall be accompanied by a written statement indicating that the information cannot be subsequently released in a personally identifiable form to any other parties without obtaining consent of the student.~~

~~(5) The term "directory information" used in subsection (1) is defined as information contained in an educational record of a student that would not be generally considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended by the student.~~

~~(6) Students may request in writing that the college not release directory information through written notice to the chief student services officer.~~

~~(7) Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s)). If the information is necessary to:~~

~~(a) Determine eligibility for financial aid;~~

~~(b) Determine the amount of financial aid;~~

~~(c) Determine the conditions of financial aid; or~~

~~(d) Enforce the terms and conditions of financial aid.~~

~~(2) Authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the United States Department of Education, or state or local authorities requiring access to education records, in connection with the audit or evaluation of a federal or state supported education program or in connection with the enforcement of or compliance with federal legal requirements which relate to such a program.~~

~~(3) School officials who have a legitimate educational interest in the records.~~

~~(4) Parent of a minor student or a nonminor dependent student, as defined in the Internal Revenue Code and upon~~

submission of a copy of the most recent Internal Revenue Service annual tax return showing the student as a dependent.

(5) Officials of another school, school system or institution of postsecondary education where the student seeks or intends to enroll or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

(6) Organizations conducting studies for, or on behalf of, the college for the purpose of developing, validating or administering predictive tests; administering student aid programs or improving instruction, if the studies are conducted in a manner that will not permit the personal identification of students or their parents by persons other than representatives of such organizations who have legitimate interests in the information; such information will be destroyed when no longer needed for the purposes for which it was provided, and the college enters into a written agreement with the organization that specifies the purpose, scope, and duration of the study and the information to be disclosed, requires the organization to use personally identifiable information from education records only to meet the purpose(s) of the study as stated in the written agreement and requires the organization to conduct the study in a manner that does not permit personal identification of parents and students to anyone other than representatives of the organization within a specified time period when it is no longer needed for the purposes for which the study was conducted.

(7) Accrediting organizations to carry out accreditation functions.

(8) Persons or entities designated by a judicial order or lawfully issued subpoena, upon the condition that the college makes a reasonable effort to notify the student of all such orders or subpoenas and of its intent to release records in advance of compliance with the order or subpoena, unless:

(a) It is a federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(b) A subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response not be disclosed; or

(c) An ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b (g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(9) Appropriate persons, including parents of an eligible student, in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(10) Persons who request information that is designated as "directory information."

(11) Victims alleging a crime of violence or a nonforcible sex offense, the final results of a disciplinary proceeding conducted by the college after October 7, 1998, with respect to the alleged crime or offense. Disclosure is permitted regardless of whether the college concluded a violation was committed.

(12) To others, the final results of the disciplinary proceeding when, at its discretion the college believes that disclosure will serve a legitimate educational interest, and determines through a disciplinary proceeding conducted under its student conduct code that the alleged student perpetrator committed a crime of violence or a nonforcible sexual offense that is a violation of the college rules or policies with respect to such crime or offense. For purposes of this subsection, "final results" means the name of the student perpetrator, the violation committed, and any sanction imposed by the college on that student. Names of other students involved in the violation, such as a victim or witness, will be released only with the written consent of those students.

(13) Parent of a student of the college regarding the student's violation of any federal, state or local law, or of any rule or policy of the college governing the use of alcohol or controlled substance, if the student is under the age of twenty-one, and the college had determined that the student has committed a disciplinary violation with respect to that use or possession.

(14) When a parent or eligible student initiates legal action against the college or when the college initiates legal action against the parent or eligible student, the college may disclose to the court any education records of the student that are relevant to the legal action.

(15) Students upon providing evidence sufficient to demonstrate that the requesting individual is in fact the student to whom the records relate such as: A driver's license, a college student identification card, or other photographic identification.

(16) For deceased students, members of the family or other persons with the written approval of the family or representatives of the estate. The request for education records must be accompanied by a copy of the death certificate or obituary. Absent written approval from the family or representative of the estate, only directory information will be disclosed to persons upon request.

(17) The disclosure concerns sex offenders and other offenders required to register under Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable federal guidelines.

(18) The disclosure involves records or information from which all personally identifiable information has been removed

Students may request in writing that the college not release directory information through written notice to the registrar.

Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Q-02-350

Confidentiality of student records.

WAC 132Q-02-410 Eligibility for clinical programs.

WSR 11-20-023
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:26 p.m., effective October 24, 2011]

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

Purpose: To clarify existing rules and add a new section regarding smoking and tobacco use.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-30-130 and 130Q-30-238.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-091 on July 1, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-130 Responsibility for guests. A student or student organization is responsible for the conduct of guests on or in college premises and at functions sponsored by the college or sponsored by a recognized student organization. Bringing any person including children to a teaching environment without the express approval of the faculty member or other authorized official is prohibited.

NEW SECTION

WAC 132Q-30-231 Smoking and tobacco use. Smoking and tobacco use are prohibited in all Community Colleges of Spokane facilities and motor pool vehicles with no exception.

(1) Smoking and tobacco use are also prohibited:

(a) Within twenty-five feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking and tobacco use are prohibited; and

(b) Where designated on college premises.

(2) "Smoking" means:

(a) Inhaling, exhaling, burning, carrying or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lit tobacco products; or

(b) Use of electronic nicotine delivery devices including, but not limited to, electronic cigarettes, vapor cigarettes, or similar products.

(3) "Tobacco use" means the personal use of:

(a) Any tobacco product, which shall include smoking, as defined in subsection (2) of this section, as well as use of an electronic cigarette or any other device intended to simulate smoking;

(b) Smokeless tobacco, including snuff, chewing tobacco, smokeless pouches, or any other form of loose-leaf, smokeless tobacco.

(4) "Facilities" means a district owned or controlled property, building, or component of that property/building.

(5) "Motor pool vehicles" means vehicles assigned to specific college departments or programs; vehicles used for instructional purposes; vehicles dispatched to staff and students on a reserved, single-use basis; and vehicles assigned to specific faculty and staff.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-238 Abuse or theft of CCS information technology. Theft or abuse of computer facilities, equipment and information technology resources including:

(1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Use of another individual's identification and/or password.

(4) Use of computing facilities and resources to interfere with the work of another student, faculty member, or college official.

(5) Use of computing facilities and resources to send obscene, harassing, or threatening messages.

(6) Use of computing facilities and resources to interfere with normal operation of the college computing system.

(7) Use of computing facilities and resources in violation of copyright laws.

(8) Any violation of the CCS (~~Information Technology Resources~~) Acceptable Use of Information Technology Resources policy (~~((7.30.05) or procedure)~~).

WSR 11-20-024
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:27 p.m., effective October 24, 2011]

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

Purpose: Housekeeping to update titles, addresses, and internal references.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-108-020 and 132Q-108-050.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-092 on July 1, 2011.

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

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

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

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

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-108-020 Appointment of presiding officers. The chancellor(~~(CEO)~~) shall appoint a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the (~~(chief executive officer)~~) chancellor or a designee of the (~~(chief executive officer)~~) chancellor, or any combination of the above. Where more than one individual is designated to be the presiding officer, one person shall be designated by the (~~(chief executive officer)~~) chancellor or the designee of the (~~(chief executive officer)~~) chancellor to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-108-050 Brief adjudicative procedures. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
- (2) Disputes concerning educational records;
- (3) Student conduct proceedings. The procedural rules in chapter (~~(132Q-02)~~) 132Q-30 WAC apply to these procedures;
- (4) Parking violations. The procedural rules in chapter 132Q-20 WAC apply to these proceedings;
- (5) Outstanding debts owed by students or employees;

(6) Loss of eligibility for participation in institution-sponsored athletic events(~~(pursuant to WAC 132Q-02-510 [132Q-02-420])~~).

WSR 11-20-025
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:27 p.m., effective October 24, 2011]

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

Purpose: Housekeeping to update titles, addresses, and internal references.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-113-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-093 on July 1, 2011.

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

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

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

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

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-113-010 Designation of legislative liaisons. As required by RCW 42.17.190, those persons holding the following positions within Washington State Community College District 17 are designated legislative liaisons for Washington State Community College District 17 and those community colleges contained within Community Colleges of Spokane:

- (1) Members of the board of trustees;
- (2) Chancellor(~~(chief executive officer)~~);
- (3) College presidents, (~~(executive vice president)~~); chief executive officer;
- (4) District management services officers; and
- (5) All those persons designated in writing by the chancellor(~~(chief executive officer)~~) of Washington State Community College District 17, which writing shall be made available among the records maintained by the office of the

chancellor(~~chief executive officer~~) of Washington State Community College District 17.

WSR 11-20-026
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:28 p.m., effective October 24, 2011]

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

Purpose: Housekeeping to update titles, addresses, and internal references.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-135-050.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-094 on July 1, 2011.

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

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

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

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

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 91-17-077, filed 8/21/91, effective 9/21/91)

WAC 132Q-135-050 State Environmental Policy Act (SEPA). It is the policy of the Community Colleges of Spokane that capital projects shall be accomplished in compliance with chapter 43.21C RCW, the State Environmental Policy Act (SEPA), and in accordance with chapter 197-11 WAC and all subsequent amendments thereto, and WAC 131-24-030.

In compliance with chapter 197-11 WAC, the (~~chief executive officer~~) chancellor or a duly appointed administrator designee shall be the responsible official for implementing this policy.

WSR 11-20-027
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed September 23, 2011, 2:29 p.m., effective October 24, 2011]

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

Purpose: Housekeeping to update titles, addresses, and internal references.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-136-010, 132Q-136-020, 132Q-136-030, 132Q-136-040, and 132Q-136-060.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-095 on July 1, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: September 20, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

AMENDATORY SECTION (Amending Resolution No. 22, filed 9/14/84)

WAC 132Q-136-010 Use of district facilities—General policy and delegation. (1) Washington State Community College District 17 (~~the~~) Community Colleges of Spokane is an educational institution provided and maintained by the people of the state in order to carry out its mission pursuant to chapter 28B.50 RCW. The purpose of this policy is to assure that all facilities operated, owned or maintained by the district are reserved primarily for those activities which either are related directly to the district's mission or are otherwise justifiable on the basis of their contributions to the cultural, educational, economic or recreational interests of the state and its people.

(2) The board of trustees delegates to the (~~chief executive officer and district president~~) chancellor, or staff so designated by the (~~chief executive officer~~) chancellor, the authority to establish procedures for the regulation and review of the use of district facilities and to establish user fees where appropriate.

AMENDATORY SECTION (Amending Resolution No. 22, filed 9/14/84)

WAC 132Q-136-020 Definitions. As used in this chapter, the following terms shall have the following meaning:

(1) "Facilities" shall include all structures, building, grounds, parking lots, sidewalks and airspace owned or controlled by District 17.

(2) "District" or "District 17" shall include Spokane Community College, Spokane Falls Community College, the Institute of Extended Learning and any other college or organizational unit of Washington State Community College District 17 hereafter established by the district board of trustees.

(3) "Use of facilities" shall include the holding of events, the posting and removal of signs, all forms of advertising, commercial activities, charitable solicitation and any other activity which takes place in or on facilities owned or controlled by District 17.

(4) "Scheduling office" shall be the office within the organization of the district which is designated as the office responsible for scheduling a particular district facility. The designation of scheduling offices shall be made by the (~~(chief executive officer)~~) chancellor, or staff so designated by the (~~(chief executive officer)~~) chancellor, pursuant to WAC 132Q-136-010(2).

(5) "User fee" shall be the fee, if any, charged any user for the use of facilities, including a use fee, fees for special custodial, attendant or security services, fees for supervisor services, fees for the use of special district equipment in conjunction with the use of facilities and any other fees established pursuant to WAC 132Q-136-010(2). The schedule of user fees may be amended from time to time.

(6) "Academic or administrative unit sponsorship" shall mean that the head of an academic or administrative unit within the district has reviewed a request for use of facilities, has determined that such use of facilities meets the general policy concerning the use of district facilities pursuant to WAC 132Q-136-010(1) and all limitations on the use of facilities pursuant to WAC 132Q-136-040, has determined that the academic or administrative unit is willing to sponsor the proposed use of facilities and has signed the appropriate request form.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-136-030 Users. (1) College personnel, and official student organizations of Washington State Community College District 17 may use district facilities to hold events for college personnel and students provided such use complies with the general policy on the use of district facilities pursuant to WAC 132Q-136-010 and that all events are scheduled pursuant to WAC 132Q-136-050. Such use does not require either academic or administrative unit sponsorship nor does such use require approval by the chancellor(~~(chief executive officer)~~) or other designated staff.

(2) College personnel and official student organizations may use district facilities to hold events to which the general public is invited when the event has academic or administrative unit sponsorship and the approval of the chancellor(~~(chief executive officer)~~) or other designated staff.

(3) Organizations or persons other than district personnel or official student organizations may use district facilities to hold events for members of that organization provided such use complies with the general policy of the use of district facilities. Such use does not require either academic or administrative unit sponsorship, but does require the approval of the chancellor(~~(chief executive officer)~~) or designee.

(4) Organizations or persons other than district personnel or official student organizations may use district facilities to hold events to which the general public is invited when the event has academic or administrative unit sponsorship and the approval of the chancellor(~~(chief executive officer)~~) or designee.

(5) Use of facilities for religious purposes is permitted on the same basis as for nonreligious purposes as long as use for religious purposes does not dominate access to facilities pursuant to WAC 132Q-136-040.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-136-040 Limitations. (1) District facilities of Washington State Community College District 17 may not be used in ways that substantially obstruct or disrupt educational activities or freedom of movement or other lawful activities on or in district facilities.

(2) District facilities may not be used by groups, including informal groups, which discriminate in their membership or limit participation in activities on the basis of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap.

(3) College personnel or official student organizations may use district facilities to present educational forums regarding ballot propositions and/or candidates who have filed for public office as long as the audience is limited to college personnel and students. However, pursuant to RCW 42.17.130 "the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition" is prohibited.

(4) District facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities are in conjunction with authorized use of facilities by outside groups, fund raising activities directly benefiting the district, or activities fulfilling an educational or service need of the students or college personnel. The sale of any item, the use of any advertising material, or operation of any promotional activity is subject to prior approval of the chancellor(~~(chief executive officer)~~) or designee.

(5) The distribution of handbills, leaflets, pamphlets and similar materials is not permitted in or on those facilities to which access by the general public is restricted or where such distribution would significantly impinge upon the primary business being conducted.

(6) Charitable solicitation is not permitted in or on those facilities to which access by the general public is restricted or

where such solicitation would significantly impinge upon the primary business being conducted.

(7) District facilities may be used by other public or private educational institutions or public agencies only insofar as the intended use of the facilities meets a community need not being fulfilled by District 17 and where such activities do not interfere with the educational programs being offered by District 17 or with the maintenance and repair programs of the district. A user fee, if any, for such use shall be determined by the chancellor(~~chief executive officer~~) or designee.

(8) Organizations or persons other than district personnel or official student organizations may use district facilities only after the procedures pursuant to WAC 132Q-136-050 are completed and appropriate user fees have been paid in full or satisfactory payment arrangements completed.

(9) District 17 reserves the right to require that the district be represented at any use of facilities where the presence of a representative is in the best interest of the district.

(10) District equipment shall be used only when authorized and shall not be removed from any facility unless written authorization for such removal has been obtained prior to use.

(11) No decorations or other application of material to walls, ceiling or floors of any facility shall be permitted if such application will in any way mar, deface or injure the facility. Users shall be responsible for the removal or disposal of any decorations, materials, equipment, furnishings or rubbish that remain in or on any facility following use of the facility. Failure of any user to meet this obligation that results in additional cost to the district shall subject the user to additional charges for such costs.

AMENDATORY SECTION (Amending Resolution No. 22, filed 9/14/84)

WAC 132Q-136-060 Safety and liability. (1) It is the responsibility of any person or organization requesting the use of district facilities to (~~insure~~) ensure that the proposed use will be carried out in a manner that assures the safety of all persons concerned. Compliance with applicable fire, health and safety regulations is required.

(2) Authorization to organizations or persons other than district faculty, staff, or official student organizations for the use of district facilities is granted with the express understanding and condition that such organization or person assumes full responsibility for any loss, damage or claims arising out of such use. When the event involves physical activity, or otherwise would increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least one million dollars per occurrence shall be provided to the (~~chief executive officer~~) chancellor or designee.

WSR 11-20-035

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 11-02—Filed September 27, 2011, 10:55 a.m., effective October 28, 2011]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 41.135.055 requires a majority vote of the legislature to raise or add fees. The 2011 legislature authorized ecology to increase fees in 2ESHB 1087 S.L.

Purpose: This adoption amends chapter 173-224 WAC, Wastewater discharge permit fees, to increase fees for some permit fee categories whose expenditures exceed the revenues being received. The fee increases, approved by the legislature, total 4.34 percent for fiscal year 2012 and 4.62 percent for fiscal year 2013. The fee categories subject to the fee increases are: Aquatic pest control, boatyards, concentrated animal feeding operations, dairies, construction stormwater individual and general permits, industrial stormwater individual and general permits, municipal domestic wastewater (includes private and government-owned domestic wastewater), municipal stormwater, and water treatment plants.

Citation of Existing Rules Affected by this Order: Amending chapter 173-224 WAC, Wastewater discharge permit fees.

Statutory Authority for Adoption: RCW 90.48.465 Water pollution control.

Other Authority: Section 302(2), chapter 50, Laws of 2011, 2ESHB 1087 S.L.

Adopted under notice filed as WSR 11-15-075 on July 19, 2011.

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

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

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

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

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

Date Adopted: September 27, 2011.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending Order 09-06, filed 9/28/09, effective 10/29/09)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An

application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for (2) Industrial facility categories.

other than the discharge resulting from the RCRA corrective action, is being modified.

| INDUSTRIAL FACILITY CATEGORIES | FY ((2010)) 2012 ANNUAL PERMIT FEE | FY ((2011)) 2013 ANNUAL PERMIT FEE & BEYOND |
|--|---|---|
| Aluminum Alloys | \$16,713.00 | \$16,713.00 |
| Aluminum and Magnesium Reduction Mills | | |
| a. NPDES Permit | 98,554.00 | 98,554.00 |
| b. State Permit | 49,279.00 | 49,279.00 |
| Aluminum Forming | 50,136.00 | 50,136.00 |
| Aggregate Production - Individual Permit Coverage | | |
| a. Mining Activities | | |
| 1. Mining, screening, washing and/or crushing | 2,876.00 | 2,876.00 |
| 2. Nonoperating aggregate site (fee per site) | 118.00 | 118.00 |
| b. Asphalt Production | | |
| 1. 0 - < 50,000 tons/yr. | 1,198.00 | 1,198.00 |
| 2. 50,000 - < 300,000 tons/yr. | 2,877.00 | 2,877.00 |
| 3. 300,000 tons/yr. and greater | 3,598.00 | 3,598.00 |
| c. Concrete Production | | |
| 1. 0 - < 25,000 cu. yds/yr. | 1,198.00 | 1,198.00 |
| 2. 25,000 - < 200,000 cu. yds/yr. | 2,877.00 | 2,877.00 |
| 3. 200,000 cu. yds/yr. and greater | 3,598.00 | 3,598.00 |
| The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories. | | |
| d. Portable Operations | | |
| 1. Rock Crushing | 2,876.00 | 2,876.00 |
| 2. Asphalt | 2,876.00 | 2,876.00 |
| 3. Concrete | 2,876.00 | 2,876.00 |
| Aggregate Production - General Permit Coverage | | |
| a. Mining Activities | | |
| 1. Mining, screening, washing and/or crushing | 2,012.00 | 2,012.00 |
| 2. Nonoperating aggregate site (fee per site) | 83.00 | 83.00 |
| b. Asphalt Production | | |
| 1. 0 - < 50,000 tons/yr. | 840.00 | 840.00 |
| 2. 50,000 - < 300,000 tons/yr. | 2,013.00 | 2,013.00 |
| 3. 300,000 tons/yr. and greater | 2,517.00 | 2,517.00 |
| c. Concrete Production | | |
| 1. 0 - < 25,000 cu. yds/yr. | 840.00 | 840.00 |
| 2. 25,000 - < 200,000 cu. yds/yr. | 2,013.00 | 2,013.00 |
| 3. 200,000 cu. yds/yr. and greater | 2,517.00 | 2,517.00 |
| The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories. | | |
| d. Portable Operations | | |
| 1. Rock Crushing | 2,013.00 | 2,013.00 |
| 2. Asphalt | 2,013.00 | 2,013.00 |
| 3. Concrete | 2,013.00 | 2,013.00 |

| INDUSTRIAL FACILITY CATEGORIES | FY ((2010)) <u>2012</u> ANNUAL PERMIT FEE | FY ((2011)) <u>2013</u> ANNUAL PERMIT FEE <u>&</u> <u>BEYOND</u> |
|--|--|--|
| Aquaculture | | |
| a. Finfish hatching and rearing - Individual Permit | 5,012.00 | 5,012.00 |
| b. Finfish hatching and rearing - General Permit Coverage | 3,511.00 | 3,511.00 |
| c. Shellfish hatching | 182.00 | 190.00 |
| Aquatic Pest Control | | |
| a. Irrigation Districts | ((397.00)) <u>433.00</u> | ((415.00)) <u>453.00</u> |
| b. Mosquito Control Districts | ((397.00)) <u>433.00</u> | ((415.00)) <u>453.00</u> |
| c. Invasive Moth Control | ((397.00)) <u>433.00</u> | ((415.00)) <u>453.00</u> |
| d. Aquatic Species Control & Eradication | ((397.00)) <u>433.00</u> | ((415.00)) <u>453.00</u> |
| e. Oyster Growers | ((397.00)) <u>433.00</u> | ((415.00)) <u>453.00</u> |
| f. Rotenone Control | ((397.00)) <u>433.00</u> | ((415.00)) <u>453.00</u> |
| Boat Yards - Individual Permit Coverage | | |
| a. With storm water only discharge | 428.00 | 428.00 |
| b. All others | 856.00 | 856.00 |
| Boat Yards - General Permit Coverage | | |
| a. With storm water only discharge | ((313.00)) <u>341.00</u> | ((327.00)) <u>357.00</u> |
| b. All others | ((633.00)) <u>691.00</u> | ((662.00)) <u>723.00</u> |
| Coal Mining and Preparation | | |
| a. < 200,000 tons per year | 6,680.00 | 6,680.00 |
| b. 200,000 - < 500,000 tons per year | 15,042.00 | 15,042.00 |
| c. 500,000 - < 1,000,000 tons per year | 26,739.00 | 26,739.00 |
| d. 1,000,000 tons per year and greater | 50,136.00 | 50,136.00 |
| Combined Industrial Waste Treatment | | |
| a. < 10,000 gpd | 3,342.00 | ((3342.00)) <u>3,342.00</u> |
| b. 10,000 - < 50,000 gpd | 8,354.00 | 8,354.00 |
| c. 50,000 - < 100,000 gpd | 16,713.00 | 16,713.00 |
| d. 100,000 - < 500,000 gpd | 33,422.00 | 33,422.00 |
| e. 500,000 gpd and greater | 50,136.00 | 50,136.00 |
| Combined Food Processing Waste Treatment Facilities | | |
| | 16,000.00 | 16,000.00 |
| Combined Sewer Overflow System | | |
| a. < 50 acres | 3,342.00 | 3,342.00 |
| b. 50 - < 100 acres | 8,354.00 | 8,354.00 |
| c. 100 - < 500 acres | 10,030.00 | 10,030.00 |
| d. 500 acres and greater | 13,368.00 | 13,368.00 |
| Commercial Laundry | | |
| | 428.00 | 428.00 |

| INDUSTRIAL FACILITY CATEGORIES | FY ((2010)) <u>2012</u> ANNUAL PERMIT FEE | FY ((2011)) <u>2013</u> ANNUAL PERMIT FEE & <u>BEYOND</u> |
|--|--|---|
| Concentrated Animal Feeding Operation | | |
| a. < 200 Animal Units | ((180.00)) <u>196.00</u> | ((188.00)) <u>205.00</u> |
| b. 200 - < 400 Animal Units | ((450.00)) <u>491.00</u> | ((471.00)) <u>514.00</u> |
| c. 400 - < 600 Animal Units | ((901.00)) <u>984.00</u> | ((943.00)) <u>1,029.00</u> |
| d. 600 - < 800 Animal Units | ((1,351.00)) <u>1,474.00</u> | ((1,413.00)) <u>1,542.00</u> |
| e. 800 Animal Units and greater | ((1,803.00)) <u>1,968.00</u> | ((1,886.00)) <u>2,059.00</u> |
| Crop Preparing - Individual Permit Coverage | | |
| a. 0 - < 1,000 bins/yr. | 333.00 | 333.00 |
| b. 1,000 - < 5,000 bins/yr. | 669.00 | 669.00 |
| c. 5,000 - < 10,000 bins/yr. | 1,337.00 | 1,337.00 |
| d. 10,000 - < 15,000 bins/yr. | 2,676.00 | 2,676.00 |
| e. 15,000 - < 20,000 bins/yr. | 4,425.00 | 4,425.00 |
| f. 20,000 - < 25,000 bins/yr. | 6,183.00 | 6,183.00 |
| g. 25,000 - < 50,000 bins/yr. | 8,271.00 | 8,271.00 |
| h. 50,000 - < 75,000 bins/yr. | 9,192.00 | 9,192.00 |
| i. 75,000 - < 100,000 bins/yr. | 10,694.00 | 10,694.00 |
| j. 100,000 - < 125,000 bins/yr. | 13,368.00 | 13,368.00 |
| k. 125,000 - < 150,000 bins/yr. | 16,712.00 | 16,712.00 |
| l. 150,000 bins/yr. and greater | 20,055.00 | 20,055.00 |
| Crop Preparing - General Permit Coverage | | |
| a. 0 - < 1,000 bins/yr. | 232.00 | 232.00 |
| b. 1,000 - < 5,000 bins/yr. | 468.00 | 468.00 |
| c. 5,000 - < 10,000 bins/yr. | 937.00 | 937.00 |
| d. 10,000 - < 15,000 bins/yr. | 1,873.00 | 1,873.00 |
| e. 15,000 - < 20,000 bins/yr. | 3,100.00 | 3,100.00 |
| f. 20,000 - < 25,000 bins/yr. | 4,328.00 | 4,328.00 |
| g. 25,000 - < 50,000 bins/yr. | 5,788.00 | 5,788.00 |
| h. 50,000 - < 75,000 bins/yr. | 6,433.00 | 6,433.00 |
| i. 75,000 - < 100,000 bins/yr. | 7,481.00 | 7,481.00 |
| j. 100,000 - < 125,000 bins/yr. | 9,360.00 | 9,360.00 |
| k. 125,000 - < 150,000 bins/yr. | 11,698.00 | 11,698.00 |
| l. 150,000 bins/yr. and greater | 14,037.00 | 14,037.00 |
| Dairies \$.50 per Animal Unit not to exceed \$((1,261.00)) <u>1,376.00</u> for FY ((2010)) <u>2012</u> and \$((1,319.00)) <u>1,440.00</u> for FY ((2011)) <u>2013 & beyond</u> | | |
| Facilities Not Otherwise Classified - Individual Permit Coverage | | |
| a. < 1,000 gpd | 1,671.00 | 1,671.00 |
| b. 1,000 - < 10,000 gpd | 3,342.00 | 3,342.00 |
| c. 10,000 - < 50,000 gpd | 8,355.00 | 8,355.00 |
| d. 50,000 - < 100,000 gpd | 13,368.00 | 13,368.00 |
| e. 100,000 - < 500,000 gpd | 26,606.00 | 26,606.00 |

| INDUSTRIAL FACILITY CATEGORIES | | FY ((2010)) 2012 ANNUAL PERMIT FEE | FY ((2011)) 2013 ANNUAL PERMIT FEE & BEYOND |
|---|--|--|--|
| f. | 500,000 - < 1,000,000 gpd | 33,422.00 | 33,422.00 |
| g. | 1,000,000 gpd and greater | 50,135.00 | 50,135.00 |
| Facilities Not Otherwise Classified - General Permit Coverage | | | |
| a. | < 1,000 gpd | 1,172.00 | 1,172.00 |
| b. | 1,000 - < 10,000 gpd | 2,425.00 | 2,425.00 |
| c. | 10,000 - < 50,000 gpd | 5,851.00 | 5,581.00 |
| d. | 50,000 - < 100,000 gpd | 9,360.00 | 9,360.00 |
| e. | 100,000 - < 500,000 gpd | 18,715.00 | 18,715.00 |
| f. | 500,000 - < 1,000,000 gpd | 23,394.00 | 23,394.00 |
| g. | 1,000,000 gpd and greater | 35,095.00 | 35,095.00 |
| Flavor Extraction | | | |
| a. | Steam Distillation | 171.00 | 171.00 |
| Food Processing | | | |
| a. | < 1,000 gpd | 1,670.00 | 1,670.00 |
| b. | 1,000 - < 10,000 gpd | 4,259.00 | 4,259.00 |
| c. | 10,000 - < 50,000 gpd | 7,604.00 | 7,604.00 |
| d. | 50,000 - < 100,000 gpd | 11,948.00 | 11,948.00 |
| e. | 100,000 - < 250,000 gpd | 16,712.00 | 16,712.00 |
| f. | 250,000 - < 500,000 gpd | 21,977.00 | 21,977.00 |
| g. | 500,000 - < 750,000 gpd | 27,572.00 | 27,572.00 |
| h. | 750,000 - < 1,000,000 gpd | 33,422.00 | 33,422.00 |
| i. | 1,000,000 - < 2,500,000 gpd | 41,175.00 | 41,175.00 |
| j. | 2,500,000 - < 5,000,000 gpd | 45,957.00 | 45,957.00 |
| k. | 5,000,000 gpd and greater | 50,136.00 | 50,136.00 |
| Fuel and Chemical Storage | | | |
| a. | < 50,000 bbls | 1,671.00 | 1,671.00 |
| b. | 50,000 - < 100,000 bbls | 3,342.00 | 3,342.00 |
| c. | 100,000 - < 500,000 bbls | 8,354.00 | 8,354.00 |
| d. | 500,000 bbls and greater | 16,713.00 | 16,713.00 |
| Hazardous Waste Clean Up Sites | | | |
| a. | Leaking Underground Storage Tanks (LUST) | | |
| 1. | State Permit | 4,383.00 | 4,383.00 |
| 2. | NPDES Permit Issued pre 7/1/94 | 4,383.00 | ((4,383.00)) |
| | | | <u>4,383.00</u> |
| 3. | NPDES Permit Issued post 7/1/94 | 8,765.00 | 8,765.00 |
| b. | Non-LUST Sites | | |
| 1. | 1 or 2 Contaminants of concern | 8,570.00 | 8,570.00 |
| 2. | > 2 Contaminants of concern | 17,140.00 | 17,140.00 |
| Ink Formulation and Printing | | | |
| a. | Commercial Print Shops | 2,571.00 | 2,571.00 |
| b. | Newspapers | 4,286.00 | 4,286.00 |
| c. | Box Plants | 6,856.00 | 6,856.00 |
| d. | Ink Formulation | 8,571.00 | 8,571.00 |
| Inorganic Chemicals Manufacturing | | | |
| a. | Lime Products | 8,354.00 | 8,354.00 |

| INDUSTRIAL FACILITY CATEGORIES | FY ((2010)) <u>2012</u> ANNUAL PERMIT FEE | FY ((2011)) <u>2013</u> ANNUAL PERMIT FEE & <u>BEYOND</u> |
|---|---|--|
| b. Fertilizer | 10,058.00 | 10,058.00 |
| c. Peroxide | 13,368.00 | 13,368.00 |
| d. Alkaline Earth Salts | 16,713.00 | 16,713.00 |
| e. Metal Salts | 23,393.00 | 23,393.00 |
| f. Acid Manufacturing | 33,416.00 | 33,416.00 |
| g. Chlor-alkali | 66,846.00 | 66,846.00 |
| Iron and Steel | | |
| a. Foundries | 16,713.00 | 16,713.00 |
| b. Mills | 33,453.00 | 33,453.00 |
| Metal Finishing | | |
| a. < 1,000 gpd | 2,004.00 | 2,004.00 |
| b. 1,000 - < 10,000 gpd | 3,341.00 | 3,341.00 |
| c. 10,000 - < 50,000 gpd | 8,353.00 | 8,353.00 |
| d. 50,000 - < 100,000 gpd | 16,712.00 | 16,712.00 |
| e. 100,000 - < 500,000 gpd | 33,420.00 | 33,420.00 |
| f. 500,000 gpd and greater | 50,133.00 | 50,133.00 |
| Noncontact Cooling Water With Additives - Individual Permit Coverage | | |
| a. < 1,000 gpd | 1,046.00 | 1,046.00 |
| b. 1,000 - < 10,000 gpd | 1,459.00 | 1,459.00 |
| c. 10,000 - < 50,000 gpd | 3,136.00 | 3,136.00 |
| d. 50,000 - < 100,000 gpd | 7,314.00 | 7,314.00 |
| e. 100,000 - < 500,000 gpd | 12,531.00 | 12,531.00 |
| f. 500,000 - < 1,000,000 gpd | 17,758.00 | 17,758.00 |
| g. 1,000,000 - < 2,500,000 gpd | 22,982.00 | 22,982.00 |
| h. 2,500,000 - < 5,000,000 gpd | 28,082.00 | 28,082.00 |
| i. 5,000,000 gpd and greater | 33,422.00 | 33,422.00 |
| Noncontact Cooling Water With Additives - General Permit Coverage | | |
| a. < 1,000 gpd | 733.00 | 733.00 |
| b. 1,000 - < 10,000 gpd | 1,461.00 | 1,461.00 |
| c. 10,000 - < 50,000 gpd | 2,195.00 | 2,195.00 |
| d. 50,000 - < 100,000 gpd | 5,120.00 | 5,120.00 |
| e. 100,000 - < 500,000 gpd | 8,773.00 | 8,773.00 |
| f. 500,000 - < 1,000,000 gpd | 12,432.00 | 12,432.00 |
| g. 1,000,000 - < 2,500,000 gpd | 16,086.00 | 16,086.00 |
| h. 2,500,000 - < 5,000,000 gpd | 19,739.00 | 19,739.00 |
| i. 5,000,000 gpd and greater | 23,394.00 | 23,394.00 |
| Noncontact Cooling Water Without Additives - Individual Permit Coverage | | |
| a. < 1,000 gpd | 838.00 | 838.00 |
| b. 1,000 - < 10,000 gpd | 1,671.00 | 1,671.00 |
| c. 10,000 - < 50,000 gpd | 2,509.00 | 2,509.00 |
| d. 50,000 - < 100,000 gpd | 5,851.00 | 5,851.00 |
| e. 100,000 - < 500,000 gpd | 10,030.00 | 10,030.00 |
| f. 500,000 - < 1,000,000 gpd | 14,203.00 | 14,203.00 |
| g. 1,000,000 - < 2,500,000 gpd | 18,310.00 | 18,310.00 |
| h. 2,500,000 - < 5,000,000 gpd | 22,559.00 | 22,559.00 |

| INDUSTRIAL FACILITY CATEGORIES | | FY ((2010)) 2012 ANNUAL PERMIT FEE | FY ((2011)) 2013 ANNUAL PERMIT FEE & BEYOND |
|--|---|--|--|
| i. | 5,000,000 gpd and greater | 26,739.00 | 26,739.00 |
| Noncontact Cooling Water Without Additives - General Permit Coverage | | | |
| a. | < 1,000 gpd | 586.00 | 586.00 |
| b. | 1,000 - < 10,000 gpd | 1,172.00 | 1,172.00 |
| c. | 10,000 - < 50,000 gpd | 1,757.00 | 1,757.00 |
| d. | 50,000 - < 100,000 gpd | 4,095.00 | 4,095.00 |
| e. | 100,000 - < 500,000 gpd | 7,019.00 | 7,019.00 |
| f. | 500,000 - < 1,000,000 gpd | 9,944.00 | 9,944.00 |
| g. | 1,000,000 - < 2,500,000 gpd | 12,868.00 | 12,868.00 |
| h. | 2,500,000 - < 5,000,000 gpd | 15,793.00 | 15,793.00 |
| i. | 5,000,000 gpd and greater | 18,715.00 | 18,715.00 |
| Nonferrous Metals Forming | | | |
| | | 16,713.00 | 16,713.00 |
| Ore Mining | | | |
| a. | Ore Mining | 3,342.00 | 3,342.00 |
| b. | Ore mining with physical concentration processes | 6,682.00 | 6,682.00 |
| c. | Ore mining with physical and chemical concentration processes | 26,739.00 | 26,739.00 |
| Organic Chemicals Manufacturing | | | |
| a. | Fertilizer | 16,713.00 | 16,713.00 |
| b. | Aliphatic | 33,422.00 | 33,422.00 |
| c. | Aromatic | 50,136.00 | 50,136.00 |
| Petroleum Refining | | | |
| a. | < 10,000 bbls/d | 33,422.00 | 33,422.00 |
| b. | 10,000 - < 50,000 bbls/d | 66,266.00 | 66,266.00 |
| c. | 50,000 bbls/d and greater | 133,699.00 | 133,699.00 |
| Photofinishers | | | |
| a. | < 1,000 gpd | 1,337.00 | 1,337.00 |
| b. | 1,000 gpd and greater | 3,342.00 | 3,342.00 |
| Power and/or Steam Plants | | | |
| a. | Steam Generation - Nonelectric | 6,680.00 | 6,680.00 |
| b. | Hydroelectric | 6,680.00 | 6,680.00 |
| c. | Nonfossil Fuel | 10,028.00 | 10,028.00 |
| d. | Fossil Fuel | 26,739.00 | 26,739.00 |
| Pulp, Paper and Paper Board | | | |
| a. | Fiber Recyclers | 16,711.00 | 16,711.00 |
| b. | Paper Mills | 33,422.00 | 33,422.00 |
| c. | Groundwood Pulp Mills | | |
| 1. | < 300 tons per day | 50,136.00 | 50,136.00 |
| 2. | > 300 tons per day | 100,270.00 | 100,270.00 |
| d. | Chemical Pulp Mills w/o Chlorine Bleaching | 133,692.00 | 133,692.00 |
| e. | Chemical Pulp Mills w/Chlorine Bleaching | 150,400.00 | 150,400.00 |
| Radioactive Effluents and Discharges (RED) | | | |
| a. | < 3 waste streams | 32,332.00 | 32,332.00 |
| b. | 3 - < 8 waste streams | 56,147.00 | 56,147.00 |

| INDUSTRIAL FACILITY CATEGORIES | FY ((2010)) <u>2012</u> ANNUAL PERMIT FEE | FY ((2011)) <u>2013</u> ANNUAL PERMIT FEE <u>&</u> <u>BEYOND</u> |
|--|--|--|
| c. 8 waste streams and greater | 92,478.00 | 92,478.00 |
| RCRA Corrective Action Sites | 23,490.00 | 23,490.00 |
| Seafood Processing | | |
| a. < 1,000 gpd | 1,671.00 | 1,671.00 |
| b. 1,000 - < 10,000 gpd | 4,259.00 | 4,259.00 |
| c. 10,000 - < 50,000 gpd | 7,604.00 | 7,604.00 |
| d. 50,000 - < 100,000 gpd | 11,948.00 | 11,948.00 |
| e. 100,000 gpd and greater | 16,713.00 | 16,713.00 |
| Shipyards | | |
| a. Per crane, travel lift, small boat lift | 3,342.00 | 3,342.00 |
| b. Per drydock under 250 ft in length | 3,342.00 | 3,342.00 |
| c. Per graving dock | 3,342.00 | 3,342.00 |
| d. Per marine way | 5,012.00 | 5,012.00 |
| e. Per sycrolift | 5,012.00 | 5,012.00 |
| f. Per drydock over 250 ft in length | 6,682.00 | 6,682.00 |
| g. In-water vessel maintenance | 6,682.00 | 6,682.00 |
| The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility. | | |
| Solid Waste Sites (nonstorm water) | | |
| a. Nonputrescible | 6,682.00 | 6,682.00 |
| b. < 50 acres | 13,367.00 | 13,367.00 |
| c. 50 - < 100 acres | 26,739.00 | 26,739.00 |
| d. 100 - < 250 acres | 33,422.00 | 33,422.00 |
| e. 250 acres and greater | 50,136.00 | 50,136.00 |
| Textile Mills | 66,846.00 | 66,846.00 |
| Timber Products | | |
| a. Log Storage | 3,342.00 | 3,342.00 |
| b. Veneer | 6,682.00 | 6,682.00 |
| c. Sawmills | 13,368.00 | 13,368.00 |
| d. Hardwood, Plywood | 23,393.00 | 23,393.00 |
| e. Wood Preserving | 32,094.00 | 32,094.00 |
| Vegetable/Bulb Washing Facilities | | |
| a. < 1,000 gpd | 110.00 | 110.00 |
| b. 1,000 - < 5,000 gpd | 224.00 | 224.00 |
| c. 5,000 - < 10,000 gpd | 440.00 | 440.00 |
| d. 10,000 - < 20,000 gpd | 887.00 | 887.00 |
| e. 20,000 and greater | 1,464.00 | 1,464.00 |
| Vehicle Maintenance and Freight Transfer | | |
| a. < 0.5 acre | 3,342.00 | 3,342.00 |
| b. 0.5 - < 1.0 acre | 6,682.00 | 6,682.00 |
| c. 1.0 acre and greater | 10,028.00 | 10,028.00 |
| Water Plants - Individual Permit Coverage | ((4,180.00)) <u>4,361.00</u> | ((4,180.00)) <u>4,562.00</u> |
| Water Plants - General Permit Coverage | ((2,925.00)) <u>3,052.00</u> | ((2,925.00)) <u>3,193.00</u> |

| INDUSTRIAL FACILITY CATEGORIES | FY ((2010)) <u>2012</u> ANNUAL PERMIT FEE | FY ((2011)) <u>2013</u> ANNUAL PERMIT FEE & <u>BEYOND</u> |
|--------------------------------|---|--|
| Wineries | | |
| a. < 500 gpd | 341.00 | 341.00 |
| b. 500 - < 750 gpd | 684.00 | 684.00 |
| c. 750 - < 1,000 gpd | 1,367.00 | 1,367.00 |
| d. 1,000 - < 2,500 gpd | 2,734.00 | 2,734.00 |
| e. 2,500 - < 5,000 gpd | 4,362.00 | 4,362.00 |
| f. 5,000 gpd and greater | 5,987.00 | 5,987.00 |

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized general partner;

(C) In the case of a general partnership, by an authorized partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not

pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

| | FY ((2010)) <u>2012</u> Annual Permit Fee | FY ((2011)) <u>2013</u> Annual Permit Fee & <u>Beyond</u> |
|------------------------------|---|--|
| Residential Equivalents (RE) | | |
| < 250,000 | \$(1.89) <u>2.07</u> | \$(1.98) <u>2.16</u> |
| > 250,000 | ((1.32)) <u>1.44</u> | ((1.38)) <u>1.51</u> |

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and government-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or government-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or government-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

| | FY ((2010)) | FY ((2011)) |
|------------------------|--|---|
| | <u>2012</u> | <u>2013</u> |
| | Annual | Annual |
| | Permit Fee | Permit Fee & |
| | | <u>Beyond</u> |
| Permitted Flows | | |
| .1 MGD and Greater | \$(8,788.00) <u>9,592.00</u> | \$(9,193.00) <u>10,035.00</u> |
| .05 MGD to < .1 MGD | \$(3,516.00) <u>3,838.00</u> | \$(3,678.00) <u>4,015.00</u> |
| .0008 MGD to < .05 MGD | \$(1,758.00) <u>1,919.00</u> | \$(1,839.00) <u>2,008.00</u> |
| < .0008 MGD | \$(530.00) <u>578.00</u> | \$(554.00) <u>605.00</u> |

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous

calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

| | FY ((2010)) 2012 | FY ((2011)) 2013 |
|---|--|--|
| | Annual Permit | Annual Permit |
| | Fee | Fee & Beyond |
| a. Individual Construction or Industrial Storm Water Permits | | |
| 1. < 50 acres | \$(3,516.00) <u>3,838.00</u> | \$(3,678.00) <u>4,015.00</u> |
| 2. 50 -< 100 acres | \$(7,027.00) <u>7,670.00</u> | \$(7,351.00) <u>8,024.00</u> |
| 3. 100 -< 500 acres | \$(10,549.00) <u>11,514.00</u> | \$(11,035.00) <u>12,046.00</u> |
| 4. 500 acres and greater | \$(14,063.00) <u>15,349.00</u> | \$(14,711.00) <u>16,058.00</u> |
| b. Facilities Covered Under the Industrial Storm Water General Permit | | |
| 1. Municipalities and state agencies | \$(1,151.00) <u>1,256.00</u> | \$(1,204.00) <u>1,314.00</u> |
| 2. New permit holders without historical gross revenue information | \$(605.00) <u>660.00</u> | \$(633.00) <u>690.00</u> |
| 3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year | | |
| Gross Revenue | | |
| Less than \$100,000 | \$(112.00) <u>122.00</u> | \$(117.00) <u>128.00</u> |
| \$100,000 -< \$1,000,000 | \$(485.00) <u>529.00</u> | \$(507.00) <u>553.00</u> |

| | FY ((2010)) 2012 Annual Permit Fee | FY ((2011)) 2013 Annual Permit Fee & Beyond |
|-----------------------------|---|--|
| \$1,000,000 -< \$2,500,000 | \$((581.00)) <u>634.00</u> | \$((608.00)) <u>663.00</u> |
| \$2,500,000 -< \$5,000,000 | \$((969.00)) <u>1,058.00</u> | \$((1,014.00)) <u>1,107.00</u> |
| \$5,000,000 -< \$10,000,000 | \$((1,454.00)) <u>1,587.00</u> | \$((1,521.00)) <u>1,660.00</u> |
| \$10,000,000 and greater | \$((1,756.00)) <u>1,917.00</u> | \$((1,837.00)) <u>2,006.00</u> |

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

c. Construction Activities Covered Under the Construction Storm Water General Permit(s)

| | | |
|---|-----------------------------------|-----------------------------------|
| 1. Less than 5 acres disturbed area | \$((454.00)) <u>496.00</u> | \$((475.00)) <u>519.00</u> |
| 2. 5 -< 7 acres of disturbed area | \$((740.00)) <u>808.00</u> | \$((774.00)) <u>845.00</u> |
| 3. 7 -< 10 acres of disturbed area | \$((999.00)) <u>1,090.00</u> | \$((1,045.00)) <u>1,140.00</u> |
| 4. 10 -< 20 acres of disturbed area | \$((1,362.00)) <u>1,487.00</u> | \$((1,425.00)) <u>1,556.00</u> |
| 5. 20 acres and greater of disturbed area | \$((1,695.00)) <u>1,850.00</u> | \$((1,773.00)) <u>1,935.00</u> |

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

| Name of Entity | FY ((2010)) 2012 Annual Permit Fee | FY ((2011)) 2013 Annual Permit Fee & Beyond |
|-----------------------|---|--|
| King County | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |
| Snohomish County | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |
| Pierce County | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |
| Tacoma, City of | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |
| Seattle, City of | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |

| Name of Entity | FY ((2010)) 2012 Annual Permit Fee | FY ((2011)) 2013 Annual Permit Fee & Beyond |
|---|---|--|
| Washington Department of Transportation | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |
| Clark County | \$((40,046.00)) <u>43,710.00</u> | \$((41,892.00)) <u>45,729.00</u> |

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ((2010)) 2012, ecology will charge \$((1-17)) 1.27 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$((56)) .62 per housing unit inside the geographic area covered by the permit. For fiscal year ((2011)) 2013, ecology will charge \$((1-22)) 1.33 per housing unit inside the geo-

graphic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(59)~~ .65 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~\$(40,046.00)~~ 43,710.00 for fiscal year ~~((2010))~~ 2012 and ~~\$(41,892.00)~~ 45,729.00 for fiscal year ~~((2011))~~ 2013. The minimum annual fee will not be lower than ~~\$(1,666.00)~~ 1,818.00 for fiscal year ~~((2010))~~ 2012 and ~~\$(1,742.00)~~ 1,902.00 for fiscal year ~~((2011))~~ 2013 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ~~\$(56)~~ .62 per housing unit for fiscal year ~~((2010))~~ 2012. The fee amount for FY ~~((2011))~~ 2013 will be ~~\$(59)~~ .65 per housing unit.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

| Annual Operating Budget | FY ((2010)) <u>2012</u> Annual Permit Fee | FY ((2011)) <u>2013</u> Annual Permit Fee & Beyond |
|-----------------------------|---|--|
| Less than \$100,000 | \$(117.00) <u>127.00</u> | \$(122.00) <u>133.00</u> |
| \$100,000 -< \$1,000,000 | \$(469.00) <u>512.00</u> | \$(491.00) <u>536.00</u> |
| \$1,000,000 -< \$5,000,000 | \$(1,172.00) <u>1,279.00</u> | \$(1,226.00) <u>1,338.00</u> |
| \$5,000,000 -< \$10,000,000 | \$(1,757.00) <u>1,918.00</u> | \$(1,838.00) <u>2,007.00</u> |
| \$10,000,000 and greater | \$(2,929.00) <u>3,197.00</u> | \$(3,064.00) <u>3,345.00</u> |

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

- (i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.
- (ii) For ports, the annual operating budget for the port district.
- (iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.
- (iv) For state agencies, the annual operating budget for the site or sites subject to the permit.
- (v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ~~((2010))~~ 2012 annual fee for a permit written for a specific entity shall be ~~\$(8,330.00)~~ 9,092.00. For FY ~~((2011))~~ 2013, the annual fee will be ~~\$(8,714.00)~~ 9,512.00.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending Order 09-06, filed 9/28/09, effective 10/29/09)

WAC 173-224-090 Permit fee reductions. With the exception of facilities covered under the industrial storm water general permit who are not eligible to apply for a fee reduction, any business required to pay a fee under an industrial or construction fee category may receive a reduction of its permit fee.

Small business fee reduction.

(1) To qualify for the fee reduction, a business must:

- (a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
- (b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);
- (c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or storm water discharge permit; and
- (d) Have an original annual fee assessment totaling five hundred dollars or greater.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

- (a) In the case of a corporation, by an authorized corporate officer;
 - (b) In the case of a limited partnership, by an authorized general partner;
 - (c) In the case of a general partnership, by an authorized partner; or
 - (d) In the case of a sole proprietorship, by the proprietor.
- (3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.
- (4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any industrial or construction small business with annual gross revenue totaling

one hundred thousand dollars or less of the goods and services produced using the processes regulated by the waste discharge or storm water discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below \$((+12.00)) 122.00 for fiscal year ((2010)) 2012 and \$((+17.00)) 128.00 for fiscal year ((2011)) 2013.

WSR 11-20-036

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 10-14—Filed September 27, 2011, 11:04 a.m., effective October 28, 2011]

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

Purpose: The purpose of this rule proposal is to amend chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund, to establish funding categories, ceiling amounts, and project eligibility for green project reserves (GPR) projects and forgivable principal loans as part of the water pollution control revolving fund.

Chapter 195-95A WAC, Uses and limitations of centennial clean water funds, is amended to maintain consistency between the revolving fund and centennial rules.

Adopting these changes will allow ecology to continue to receive federal capitalization grants for the state's revolving fund program, which provides financial assistance to local governments for water quality improvement projects.

Citation of Existing Rules Affected by this Order: Amending chapters 173-98 and 173-95A WAC.

Statutory Authority for Adoption: Chapter 90.50A RCW, RCW 90.48.035, 43.21A.080.

Adopted under notice filed as WSR 11-13-125 on June 22, 2011.

Changes Other than Editing from Proposed to Adopted Version: For chapter 173-98 WAC, all occurrences of "pre-construction activities" are changed to "preconstruction" to avoid any confusion between the preconstruction phase of a construction project and nonpoint source activity project.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 6, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 9, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 45, Repealed 0.

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

Date Adopted: September 27, 2011.

Ted Sterdevant [Sterdevant]
Director

Chapter 173-95A WAC

USES AND LIMITATIONS OF THE CENTENNIAL CLEAN WATER ((FUNDS)) PROGRAM

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-010 Purpose. (1) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the centennial clean water program, as authorized by chapter 70.146 RCW, Water pollution control facilities financing. This fund provides financial assistance to public bodies for statewide, high-priority water quality projects in the form of grants and loans through appropriation by the Washington state legislature.

(2) The centennial program may be used for the following purposes:

(a) To make grants and loans to finance the planning, design, and/or construction of water pollution control facilities; and

(b) To make grants and loans for nonpoint source pollution control management programs, including planning and implementing elements of the most current version of the ((⁽²⁾)) *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*, ((⁽²⁾)) (ecology publication #05-10-027).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-015 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the ((Washington state)) water pollution control revolving fund, and the Clean Water Act section 319 nonpoint source ((fund)) program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-020 Definitions. For the purposes of this chapter:

(1) **Activities** see water pollution control activities.

(2) **Applicant** means a public body that has applied for funding.

(3) **Best management practices** (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(4) **Cash match** means moneys used to match the state share of a grant.

(5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(6) **Centennial** means the centennial clean water program.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate

from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

(8) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all ~~((projects))~~ applications for financial assistance considered and those proposed for funding, based on ((an evaluation and the appropriations in the Washington state capital)) estimates of state and federal budgets.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-or-grant-funded activities or facilities.

(20) **Effective date** means the date the loan or grant agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of ~~((the))~~ a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

(27) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ (28) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application ~~((in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit)).~~

~~((28))~~ (29) **Existing residential need** means that portion of a water pollution control facility's capacity reserved for ((the)) residential ((population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit)) structures that:

(a) Exists within the project service area at the time of application;

(b) Is connected to the facility or is scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

~~((29))~~ (30) **Extended grant payments** means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

~~((30))~~ (31) **Facilities** see water pollution control facility.

~~((31))~~ (32) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC ~~((Submission of plans and reports for construction of wastewater facilities)).~~

~~((32))~~ (33) **Final offer and applicant list** means a catalog of all ~~((projects))~~ applications for financial assistance

considered ~~((and proposed for funding))~~ and those offered funding, based on adopted state and federal budgets.

~~((33))~~ **(34) Force account** means loan or grant project work performed using labor, materials, or equipment of a public body.

~~((34))~~ **(35) Funding cycle** means the events related to the competitive process used to allocate moneys from the ~~((clean))~~ water ~~((state))~~ pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source ~~((fund))~~ program for a state fiscal year.

~~((35))~~ **(36) Grant agreement** means a contractual arrangement between a public body and the department.

~~((36))~~ **(37) Growth** means the portion of the flows to a facility reserved for future residential, commercial, industrial, or institutional flows.

(38) Indirect cost means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((37))~~ **(39) In-kind contributions** means the value of noncash contributions provided for a project.

~~((38))~~ **(40) Interlocal agreement** means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

~~((39))~~ **(41) Interlocal costs** means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

~~((40))~~ **(42) Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((41))~~ **(43) Infiltration and inflow correction** means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to an existing sewer system.

~~((42))~~ **(44) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ **(45) Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ **(46) Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ **(47) Match** means the recipient share of eligible project costs.

~~((46))~~ **(48) Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

~~((47))~~ **(49) Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities.

"Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ **(50) Preliminary project priority list** means a catalog of all ~~((projects))~~ applications for financial assistance considered for funding ~~((based on the governor's budget))~~ and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ **(51) Project** means a water quality improvement effort funded with a grant or loan.

~~((50))~~ **(52) Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ **(53) Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ **(54) Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ **(55) Recipient** means a public body that has an effective loan or grant agreement with the department.

~~((54))~~ **(56) Residential** means the portion of the total flows to a facility that originates from single family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

(57) Revolving fund means Washington state's water pollution control revolving fund.

(58) Riparian buffer or zone means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((55))~~ **(59) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((56))~~ **(60) Service area population** means the number of people served in the area of the project.

~~((57))~~ **(61) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((58))~~ **(62) Sewer** means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

~~((59))~~ **(63) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((60))~~ **(64) State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((61))~~ **(65) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((62))~~ **(66) Total project cost** means the sum of all expenses associated with a water quality project.

~~((63))~~ **(67) Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders ~~(such)~~ the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((64))~~ **(68) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((65))~~ **(69) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((66))~~ **(70) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-100 Grant and loan eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:

- (1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;
- (2) **BMP implementation** on private property:
 - (a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;
 - (b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and
 - (c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;
- (3) **BMP implementation** on public property;
- (4) **Computer equipment and software** specific to the funded project and preapproved by the department;

- (5) **Diagnostic studies** to assess current water quality;
- (6) **Education and outreach** efforts for the public;
- (7) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;
- (8) **Equipment and tools** as identified in a grant or loan agreement;
- (9) **Groundwater protection activities** such as well-head protection and critical aquifer recharge area protection;
- (10) **Hardship assistance** for wastewater treatment facilities construction, ~~((storm water management, and))~~ on-site ~~((septic))~~ sewage system repair and replacement, and construction elements of a design-build-operate project;
- (11) **Implementation** of eligible projects identified in water quality plans;
- (12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);
- (13) **Lake implementation and planning activities** on lakes with public access;
- (14) **Landscaping for erosion control** directly related to a project, or site-specific landscaping ~~((in order))~~ to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;
- (15) **Light refreshments** for meetings when specified in the loan or grant agreement;
- (16) **Monitoring BMP effectiveness;**
- (17) **Monitoring equipment** used for water quality assessment;
- (18) **Monitoring water quality;**
- (19) **On-site ~~((septic))~~ sewage systems:**
 - (a) **Development and administration of a local loan fund for on-site ~~((septic))~~ sewage system repair and replacement** for residential and small commercial systems; and
 - (b) **On-site ~~((wastewater))~~ sewage system surveys;**
- (20) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;
- (21) **Planning, including** comprehensive basin plans, watershed plans, and area-wide water quality ~~((development))~~ plans;
- (22) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;
- (23) **Sales tax;**
- (24) **Stream restoration** that meets recognized water quality standards;
- (25) **Storm water activities that are** certain nonpermit-related planning activities, such as education and outreach, establishing a storm water utility, identifying and mapping of pollution sources, and department-approved erosion control;
- (26) **Total maximum daily load study** development and implementation;
- (27) **Training** to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;
- (28) **Wastewater or storm water utility development;**

(29) **Wastewater or storm water utility rate** or development impact fee studies;

(30) **Water quality education** and stewardship programs; and

(31) **Wellhead protection.**

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-110 Loan only eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan assistance:

(1) **CAFOs**, for BMP implementation;

(2) **Facilities** for wastewater and storm water:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) **Facilities planning** for water pollution control facilities; and

(iii) **Storm water** planning for permitted facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Combined sewer overflow abatement;

(ii) Side sewers or individual pump stations or other appurtenances on private residential property;

(iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;

(iv) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of storm water; and

(v) Water pollution control facility construction ~~((with reserve capacities))~~ to meet ~~((up to one hundred ten percent of))~~ existing residential needs;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts;

(3) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application);

(b) For prevention of water pollution;

(c) For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; or

(d) for wetland habitat preservation;

(4) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(5) **On-site ~~((septic))~~ sewage systems:**

(a) **Local loan fund** program development and administration;

(b) **New sewer systems** to eliminate failing or failed on-site ~~((septic))~~ sewage systems;

(6) **Spare parts**, an initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements; and

(7) **Transferring ownership** of a small wastewater system to a public body.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-120 Projects ineligible for centennial program funding. While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:

(1) **Abandonment** or demolition of existing structures;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Commercial, institutional or industrial** wastewater pretreatment;

(4) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(5) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(6) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;

(7) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(8) **Flood control**, projects or project elements intended solely for flood control;

(9) **Funding application preparation** for loans or grants;

(10) **Interest** on bonds, interim financing, and associated costs to finance projects;

(11) **Landscaping** for aesthetic reasons;

(12) **Legal expenses** associated with claims and litigation;

(13) **Lobbying** or expenses associated with lobbying;

(14) **Monitoring equipment** for sampling and analysis of commercial, institutional, or industrial discharges;

(15) **Office furniture** not included in the recipient's indirect rate;

(16) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city ~~((council member))~~ councilmember, and city attorney~~((,- etc-))~~;

(17) **Operation and maintenance** costs;

(18) **Overtime** differential paid to employees of a public body to complete administrative or force account work;

(19) **Permit fees;**

(20) **Professional dues;**

(21) **Reclamation** of abandoned mines;

(22) **Refinance** of existing debt;

(23) **Rework costs** or previously funded objectives;

(24) **Solid or hazardous waste;**

(25) Utility local improvement district formation;

~~((26))~~ (26) **Vehicle purchase**, except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and

~~((26))~~ (27) **Water quantity** or other water resource projects that solely address water quantity issues.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-300 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the ~~((agency))~~ department web site.

(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in ~~((^(b)))~~Washington's *Water Quality Plan to Control Nonpoint Sources of Pollution*,~~((^(b)))~~ or other such plans;
- (h) Performance measures and postproject assessment monitoring;

(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;

(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

(3) Minimum score on application.

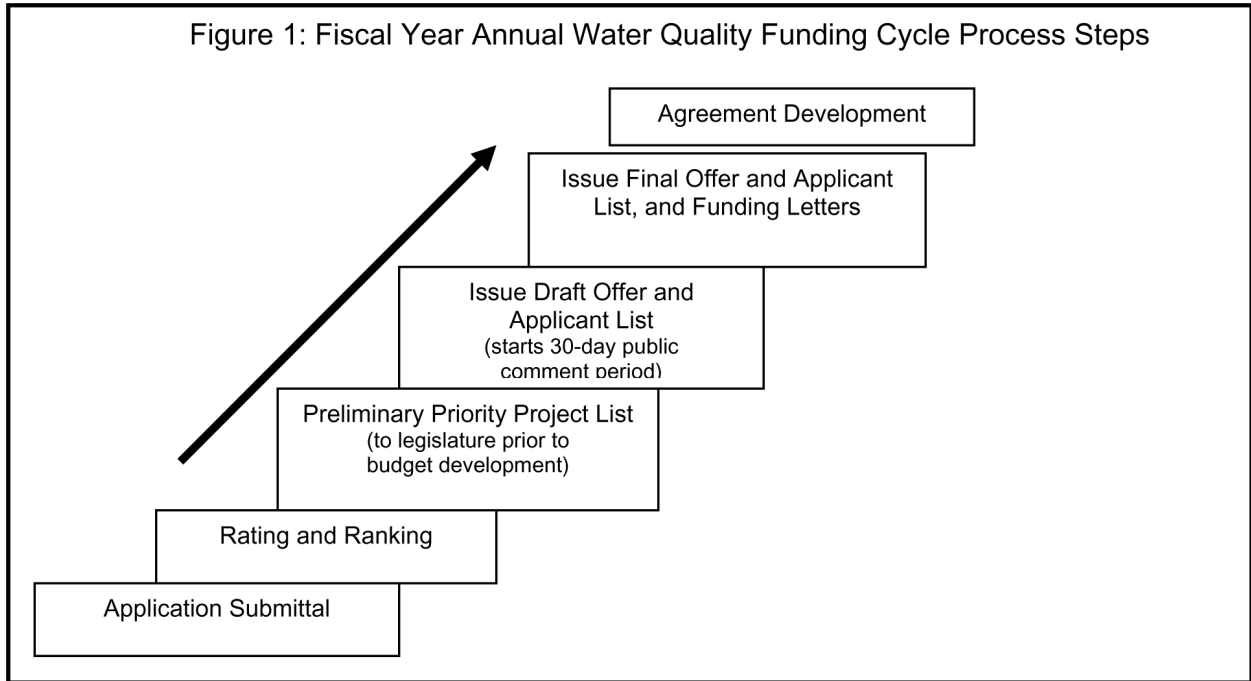
(a) An applicant must receive a minimum score equal to fifty percent of the available points on section three, water quality and public health improvements, of the water quality financial assistance application to be rated for the *Draft Offer and Applicant List* and *Final Offer and Applicant List*. An applicant with fewer than fifty percent of the points available on section three of the application is not eligible for funding consideration. The department may offer funding to applicants with fewer than fifty percent of the points available on section three if demand for funding is low.

(b) An applicant must receive a minimum score equal to sixty percent of the available points on the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

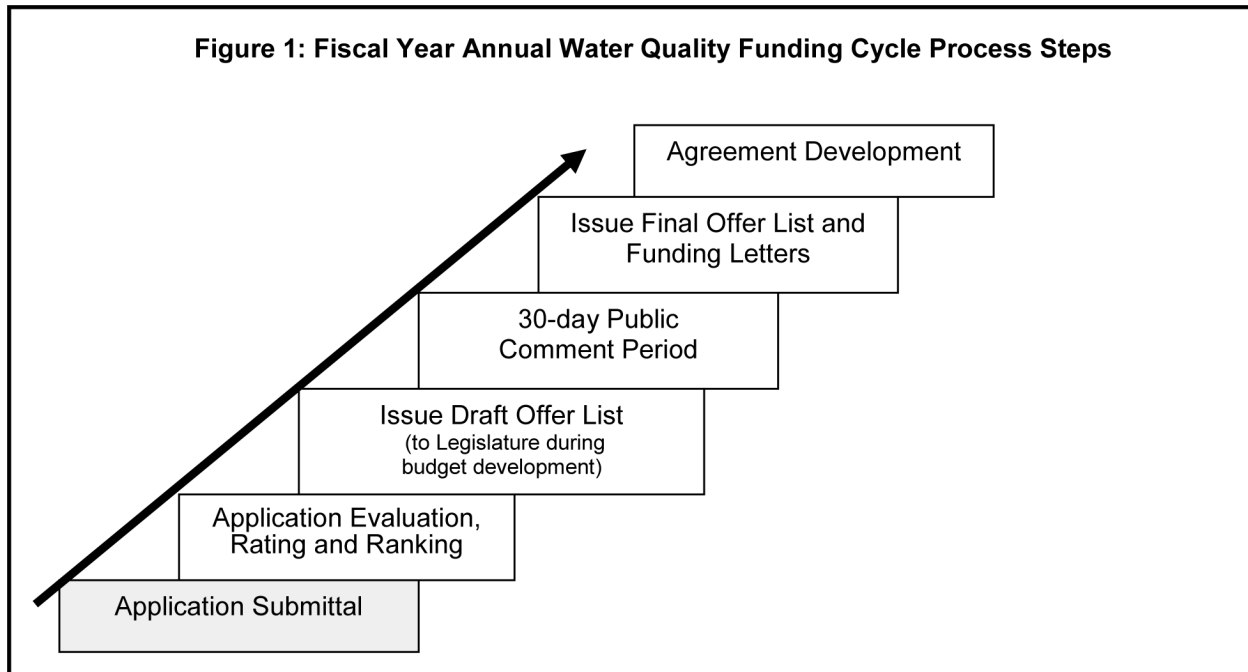
AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-310 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

~~((STRICKEN GRAPHIC))~~



~~STRICKEN GRAPHIC))~~



(2) In general, ecology will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature ~~((for))~~ during budget ((consideration)) development;
- (i) Develop a combined Draft Offer and Applicant List;
- (j) Facilitate a public review and comment period for the combined Draft Offer and Applicant List;
- (k) Sponsor at least one public meeting to explain the combined Draft Offer and Applicant List;
- (l) Develop a combined ~~(())~~ Final Offer and Applicant List. ~~(())~~ Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan or grant agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-320 Final offer and applicant list. Loan and grant offers identified on the ~~(())~~ Final Offer and Applicant List ~~(())~~ will be effective for up to one year from the publication date of the ~~(())~~ Final Offer and Applicant List. ~~(())~~ Loan and grant offers that do not result in a signed agreement are automatically ~~((terminated))~~ ended.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-400 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:

- (a) Service area population;
 - (b) Existing residential need at the time of application; and
 - (c) Level of financial burden placed on the ratepayers.
- (2) **Service area population.** Applicants serving an area of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.
- (3) **Existing residential need.** Water pollution control facilities construction costs that are associated with existing residential need ~~((plus ten percent))~~ at the time of application may be eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.

~~((For example:~~

~~If an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for reserve capacity for growth, the applicant may be eligible for six million six hundred thousand dollars in grant funding.~~

| | |
|---|------------------|
| Residential need: | \$6,000,000 |
| Reserve capacity for growth (10% of \$6M): | <u>\$600,000</u> |
| Grant Eligible Amount | \$6,600,000)) |

(4) Level of financial burden.

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using:

- (i) Estimated construction costs;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future operation and maintenance costs for the total facility;
- ~~((iii))~~ (v) The applicant's current and future annual debt service on the project;
- ~~((iv))~~ (vi) The annual debt service for the project if funded with a water pollution control revolving fund loan;
- (vii) Other grants and loans funding the project;
- ~~((v))~~ Existing annual operation, maintenance, and equipment replacement costs;
- ~~((vi))~~ (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project; ~~(and~~
- ~~((vii))~~ (x) The nonresidential share of the total annual costs; and
- (xi) The MHI for the project area;

(b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship-funding continuum (shown below in figure 2 and figure 3);

(c) The most recent available ~~((census data))~~ American community survey data determines the ~~((median household income. This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index))~~ MHI; and

(d) If ~~((median household income))~~ MHI data are not available for a community ~~((or if the community)),~~ the county MHI in which the community resides will be used;

(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the ~~((median household income))~~ MHI for the project area.

(5) **Hardship grant ceiling amounts.** The department uses the grant hardship-funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.

For example:

When a grant applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy-five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).

(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

(7) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum, shown in figure 2 below, to determine the hardship-loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When a loan applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 3 below).

(8) Design-build-operate (construction portion).

(a) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations;

(b) The construction portion of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with WAC 173-95A-400. Hardship-grant ceiling amounts found in WAC 173-95A-520 apply;

(c) Design-build-operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;

(d) The project scope of work must implement a department-approved facilities plan;

(e) In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;

(f) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to ~~((utilize))~~ use the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(g) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(h) Costs associated with change orders are not eligible for reimbursement;

(10) **Figure 2: Grant Hardship-Funding Continuum**

| | | | | |
|---|--|--|--|--|
| Sewer User Fee divided by MHI | Below ((2.0%)) <u>two percent</u> | ((2.0%)) <u>Two percent</u> and above, but <u>below ((3.0%)) <u>three percent</u></u> | ((3.0%)) <u>Three percent</u> and above, but below ((5.0%)) <u>five percent</u> | ((5.0%)) <u>Five percent</u> and above |
| Hardship Designation | <i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars) | <i>Moderate Hardship</i> | <i>Elevated Hardship</i> | <i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI)) |
| Grant Hardship-Funding Continuum | ((0%)) <u>Zero percent</u> Grant | ((50%)) <u>Fifty percent</u> Grant (up to five million dollars) | ((75%)) <u>Seventy-five percent</u> Grant (up to five million dollars) | ((100%)) <u>One hundred percent</u> Grant (up to five million dollars) |

(11) **Figure 3: Loan Hardship-Funding Continuum**

| | | | | |
|--|--|--|--|--|
| Sewer User Fee divided by MHI | Below ((2.0%)) <u>two percent</u> | ((2.0%)) <u>Two percent</u> and above, but <u>below ((3.0%)) <u>three percent</u></u> | ((3.0%)) <u>Three percent</u> and above, but below ((5.0%)) <u>five percent</u> | ((5.0%)) <u>Five percent</u> and above |
| Hardship Designation | <i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars) | <i>Moderate Hardship</i> | <i>Elevated Hardship</i> | <i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI)) |
| Loan Hardship-Funding Continuum | Loan at ((60%)) <u>sixty percent</u> of market rate | Loan at ((40%)) <u>forty percent</u> of market rate | Loan at ((20%)) <u>twenty percent</u> of market rate | Loan at ((0%)) <u>zero percent</u> interest |

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-410 On-site ~~((septic))~~ sewage system repair and replacement programs. Applicants may apply for grant funding in conjunction with a ~~((state))~~ water pollution control revolving fund loan to establish or continue programs that provide hardship funding for on-site ~~((septic))~~ sewage system repair and replacement for homeowners and small commercial enterprises. The ceiling amounts used for activities grants, cited in WAC 173-95A-520, also apply.

(i) Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and

(j) Before the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements.

(9) **Extended grant payments.** In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.

PART 5

~~((REQUIREMENTS FOR MANAGING GRANTS AND LOANS))~~ FUNDING DISTRIBUTION AND PROJECT DEVELOPMENT PROCESS

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-500 Funding allocation. There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then moneys may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source ~~((fund))~~ program or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account moneys, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-520 Ceiling amounts. (1) **Activities projects.** Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.** Grants for facilities construction projects are subject to ceiling amounts of five million dollars. If a centennial program grant is provided for a hardship project in conjunction with a water pollution control revolving fund (revolving fund) forgivable principal loan award for hardship, then the ceiling amount for the combined revolving fund forgivable principal loan and Centennial program grant is five million dollars.

(4) ~~((Partially funded projects. If a project is offered partial funding due to the lack of available centennial moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.~~

~~((5))~~ **Water pollution control facilities construction bid overruns.**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

~~((6))~~ **Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-540 Step process for facilities. (1) The step process is required for facilities construction projects. The process begins with site-specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days ~~((prior to))~~ before end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.

(2) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding. Facilities plans approved by the department more than two years ~~((prior to))~~ before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.

(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and

approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The total project costs for step four projects must be five million dollars or less.

(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

NEW SECTION

WAC 173-95A-580 Approval of plans and specifications. The department must approve all plans and specifications before solicitation of bids according to chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-600 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and ~~((regulations))~~ rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-610 The Growth Management Act.

(1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that:

A county, city, or town that ~~((is required to))~~ must or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter

signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in ~~((such))~~ the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-700 Starting a project. Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.

(1) **Prior authorization to incur costs.**

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the ~~((^(b)))~~ *Final Offer and Applicant List*~~((^(b)))~~;

(ii) Costs are incurred between the publication date of the ~~((^(b)))~~ *Final Offer and Applicant List*~~((^(b)))~~ and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred ~~((prior to))~~ before the publication date of the ~~((^(b)))~~ *Final Offer and Applicant List*~~((^(b)))~~ are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) **Project initiation.** Grant or loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the ~~((^(b)))~~ *Final Offer and Applicant List*~~((^(b)))~~ on which the project was proposed.

(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan and grant offers identified on the ~~((^(b)))~~ *Final Offer and Applicant List*~~((^(b)))~~ will be effective for up to one year from the publication date of the ~~((^(b)))~~ *Final Offer and Applicant List*~~((^(b)))~~. Loan and grant offers that do not result in a signed agreement are automatically ~~((terminated))~~ ended. see WAC 173-95A-320 ~~((Final offer and applicant list))~~.

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-710 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the ~~((^(b)))~~ *Final Offer and*

Applicant List~~((^(b)))~~ on which the project was proposed. A shorter time period may be specified in the grant or loan agreement; and

(b) Completing a project means fulfilling all milestones and objectives associated with the goals of the grant or loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made ~~((prior to))~~ before the completion or expiration date of the loan or grant agreement.

NEW SECTION

WAC 173-95A-720 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-810 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may chose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to ~~((such))~~ the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is

filed with the court. This time frame is to ensure minimal disruptions to the program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|-----------------|--|
| WAC 173-95A-420 | Storm water projects. |
| WAC 173-95A-570 | Performance measures and postproject assessment. |

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the Washington state department of ecology's (department) administration of (~~the~~) Washington (~~state~~) state's water pollution control revolving fund (revolving fund), as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-020 Integrated funding approach. (1) Where possible, the (~~Washington state~~) department (~~of ecology~~) combines the management of the (~~Washington state water pollution control~~) revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 nonpoint source (~~fund~~) program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities**, see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

~~((7))~~ (8) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

~~((8))~~ (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((9))~~ (10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((10))~~ (11) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

~~((11))~~ (12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((12))~~ (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((13))~~ (14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((14))~~ (15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((15))~~ (16) **Department** means the Washington state department of ecology.

~~((16))~~ (17) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

~~((17))~~ (18) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

~~((18))~~ (19) **Draft offer and applicant list** means a catalog of all (~~projects~~) applications for financial assistance considered and those proposed for funding, based on (~~an evaluation and the appropriations in the Washington state capital~~) estimates of state and federal budgets.

~~((19))~~ (20) Easement means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((20))~~ (21) Effective date means the date the loan agreement is signed by the department's water quality program manager.

~~((21))~~ (22) Eligible cost means the portion of ~~((the))~~ a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(23) Energy efficiency means the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and produce/use renewable energy.

~~((22))~~ (24) Enforcement order means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((23))~~ (25) Engineering report means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC ~~((Submission of plans and reports for construction of wastewater facilities))~~.

~~((24))~~ (26) Environmental degradation means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~ (27) Environmental emergency means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ (28) Environmentally innovative means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way.

(29) Equivalent residential unit (ERU) means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

(30) Estimated construction cost means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ (31) Existing need means water pollution control facility's capacity reserved for all users, at the time of application ~~((in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit))~~.

~~((28))~~ (32) Existing residential need means that portion of a water pollution control facility's capacity reserved for ~~((the))~~ residential ~~((population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit))~~ structures that:

(a) Exist within the project service area at the time of application;

(b) Are connected to the facility or scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

~~((29))~~ (33) Facilities, see water pollution control facility.

~~((30))~~ (34) Facilities plan means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC ~~((Submission of plans and reports for construction of wastewater facilities))~~.

~~((31))~~ (35) Federal capitalization grant ~~((means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund))~~, see capitalization grant.

~~((32))~~ (36) Final offer and applicant list means a catalog of all ~~((projects))~~ applications for financial assistance considered ~~((and proposed for funding))~~ and those offered funding, based on adopted state and federal budgets.

~~((33))~~ (37) Force account means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ (38) Forgivable principal means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

(39) Funding category see "water pollution control activities funding category," ~~((and))~~ "water pollution control facilities funding category," "preconstruction funding category," and "green project reserves funding category."

~~((35))~~ (40) Funding cycle means the events related to the competitive process used to allocate moneys from the ~~((Washington state water pollution control))~~ revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source ~~((fund))~~ program for a state fiscal year.

~~((36))~~ (41) General obligation debt means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ (42) Green infrastructure means a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using storm water.

(43) Green project reserves means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

(44) Green project reserves funding category means that portion of the revolving fund dedicated to green project reserves projects.

(45) Growth means the portion of the total flows to a facility that is reserved for future residential, commercial, industrial, and institutional flows.

(46) Indirect cost means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((38))~~ (47) Infiltration and inflow means water, other than wastewater, that enters a sewer system.

~~((39))~~ (48) Infiltration and inflow correction means the cost-effective alternative or alternatives and the associ-

ated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((40))~~ **(49) Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur ~~((prior to))~~ before final inspection or project completion.

~~((41))~~ **(50) Intended use plan** ~~((IUP))~~ means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the ~~((water pollution control))~~ revolving fund for a fiscal year as described in section 606(c) of the act.

~~((42))~~ **(51) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ **(52) Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ **(53) Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ **(54) Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((46))~~ **(55) Perpetuity** means the point at which the ~~((water pollution control))~~ revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((47))~~ **(56) Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ **(57) Preconstruction** means facility planning, facility design, rate studies, value engineering, sewer use ordinances, and utility formation.

(58) Preconstruction funding category means that portion of the revolving fund dedicated to preconstruction projects.

(59) Preliminary project priority list means a catalog of all ~~((projects))~~ applications for financial assistance considered for funding ~~((based on the governor's budget))~~ and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ **(60) Project** means a water quality improvement effort funded with a grant or loan.

~~((50))~~ **(61) Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ **(62) Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal govern-

ment, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ **(63) Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ **(64) Recipient** means a public body that has an effective loan agreement with the department.

~~((54))~~ **(65) Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the ~~((water pollution control))~~ revolving fund loan.

~~((55))~~ **(66) Residential** means the portion of the total flows to a facility that originates from single-family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

(67) Revenue-secured debt means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ **(68) Revolving fund** means ~~((the))~~ Washington state's water pollution control revolving fund.

~~((57))~~ **(69) Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ **(70) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ **(71) Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ **(72) Service area population** means the number of people served in the area of the project.

~~((61))~~ **(73) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ **(74) Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ **(75) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ **(76) State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ **(77) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ **(78) Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ **(79) Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

(80) Water pollution means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders ~~((sueh))~~ the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ **(81) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ **(82) Water pollution control activities funding category** means that portion of the ~~((water pollution control))~~ revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ **(83) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ **(84) Water pollution control facilities funding category** means that portion of the ~~((water pollution control))~~ revolving fund dedicated to facilities projects.

~~((72))~~ **(85) Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(86) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-040 ((Water pollution control)) Revolving fund ((revolving fund)) uses. The revolving fund may be used for the following purposes:

- (1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;
- (2) To provide loans for nonpoint source pollution control management projects that implement the *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*, and for developing and implementing a

conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or ~~((purchase))~~ buy insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; ~~((and))~~

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW; and

(8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-100 Eligible. Certain projects or project elements~~((s))~~ may be eligible for loan assistance including, but not limited to, the following~~((s))~~ ~~((, may be eligible for loan assistance))~~:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site ((septic)) sewage systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site ((septic)) sewage systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) ~~((Ground water))~~ **Green project reserves projects such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125, and as defined by EPA guidance.**

(15) **Groundwater protection activities** such as well-head protection and critical aquifer recharge area protection;

~~((15))~~ (16) **Hardship assistance** for preconstruction projects, wastewater treatment facilities construction, ~~((storm water-))~~ and on-site ((septic)) sewage system repair and replacement;

~~((16))~~ (17) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

~~((17))~~ (18) **Lake implementation and associated planning activities** on lakes with public access;

~~((18))~~ (19) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

~~((19))~~ (20) **Landscaping for erosion control** directly related to a project, or site-specific landscaping ~~((in order))~~ to mitigate site conditions and comply with requirements in the SERP;

~~((20))~~ (21) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((21))~~ (22) **Light refreshments** for meetings when preapproved by the department;

~~((22))~~ (23) **Mitigation**, determined on a case-by-case basis, that addresses water quality impacts directly related to the project;

(24) **Monitoring BMP effectiveness;**

~~((23))~~ (25) **Monitoring equipment** used for water quality assessment;

~~((24))~~ (26) **Monitoring water quality;**

~~((25))~~ (27) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((26))~~ (28) **On-site ((septic)) sewage systems:**

(a) **On-site ((septic)) sewage system repair and replacement** for residential and small commercial systems;

(b) **On-site ((wastewater)) sewage system** surveys;

(c) **Local loan fund** program development and implementation;

~~((27))~~ (29) **Planning, including** comprehensive basin plans, watershed plans, and area-wide water quality ~~((development))~~ plans;

~~((28))~~ (30) **Refinancing** of water pollution control facility debt;

~~((29))~~ (31) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((30))~~ (32) **Sales tax;**

~~((31))~~ (33) **Spare parts**, an initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((32))~~ (34) **Stream restoration projects;**

~~((33))~~ (35) **Total maximum daily load study** development and implementation;

~~((34))~~ (36) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((35))~~ (37) **Transferring ownership** of a small wastewater system to a public body;

~~((36))~~ (38) **Wastewater or storm water utility development;**

~~((37))~~ (39) **Wastewater or storm water utility rate** or development impact fee studies;

~~((38))~~ (40) **Water quality education** and stewardship programs.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-110 ((Noneligible)) Ineligible. Certain projects or project elements~~((:))~~ are not eligible for loan assistance including, but not limited to, the following ~~((are not eligible for loan assistance))~~:

(1) **Abandonment** or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Aquatic plant control** for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(4) **Bond costs** for debt issuance;

(5) **Bonus or acceleration payments** to contractors to meet contractual completion dates for construction;

(6) **Commercial, institutional or industrial** wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) **Commercial, institutional or industrial** monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) **Commercial, institutional or industrial** wastewater pretreatment;

(9) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) **Engineering reports;**

(12) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(13) **Flood control**, projects or project elements intended solely for flood control;

(14) **Funding application preparation** for loans or grants;

(15) **Interest** on bonds, interim financing, and associated costs to finance projects;

(16) **Landscaping** for aesthetic reasons;

(17) **Legal expenses** associated with claims and litigation;

(18) **Lobbying** or expenses associated with lobbying;

(19) **Mitigation is not eligible** unless it addresses water quality impacts directly related to the project, and will be determined on a case-by-case basis;

(20) **Office furniture** not included in the recipient's indirect rate;

(21) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city (~~council member~~) council member, and city attorney (~~etc.~~);

(22) **Operation and maintenance** costs;

(23) **Overtime** differential paid to employees of public body to complete administrative or force account work;

(24) **Permit fees;**

(25) **Personal injury compensation** or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(26) **Professional dues;**

(27) **Reclamation** of abandoned mines;

(28) **Refinancing** of existing debt;

(29) **Solid or hazardous waste cleanup;**

(30) **Utility local improvement district (ULID) formation;**

(31) **Vehicle purchase,** except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

~~((31))~~ (32) **Water quantity** or other water resource projects that solely address water quantity issues.

NEW SECTION

WAC 173-98-130 Green project reserves projects.

When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future. Water efficiency projects can be stand-alone projects, or project elements of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency projects include renewable energy projects that provide power to publicly owned treatment works (POTW), Collection System Infiltration/Inflow (I/I) detection equipment, and POTW energy management planning. Energy efficiency projects can be stand-alone projects, or project elements of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure projects can be stand-alone projects, or project elements of a larger capital improvement project.

(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site-and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements, and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects include projects that:

(a) Achieve pollution prevention or pollutant removal with reduced costs;

(b) Prepare a POTW for adaptation to the long-term effects of climate change and/or extreme weather;

(c) Produce total/integrated water resources management planning likely to result in a capital project;

(d) Construct buildings or renovation of an existing building on POTW facilities that are U.S. Building Council LEED certified; and

(e) Develop decentralized wastewater treatment solutions to existing deficient or failing on-site wastewater systems.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-200 Application for funding. (1) To apply for funding, the applicant must submit a completed application to the department. The department will provide the application on the (~~agency~~) department web site.

(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in ((²))*Washington's Water Quality Plan to Control Nonpoint Sources of Pollution*,((²)) or other such plans;
- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;

(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

(3) Minimum score on application.

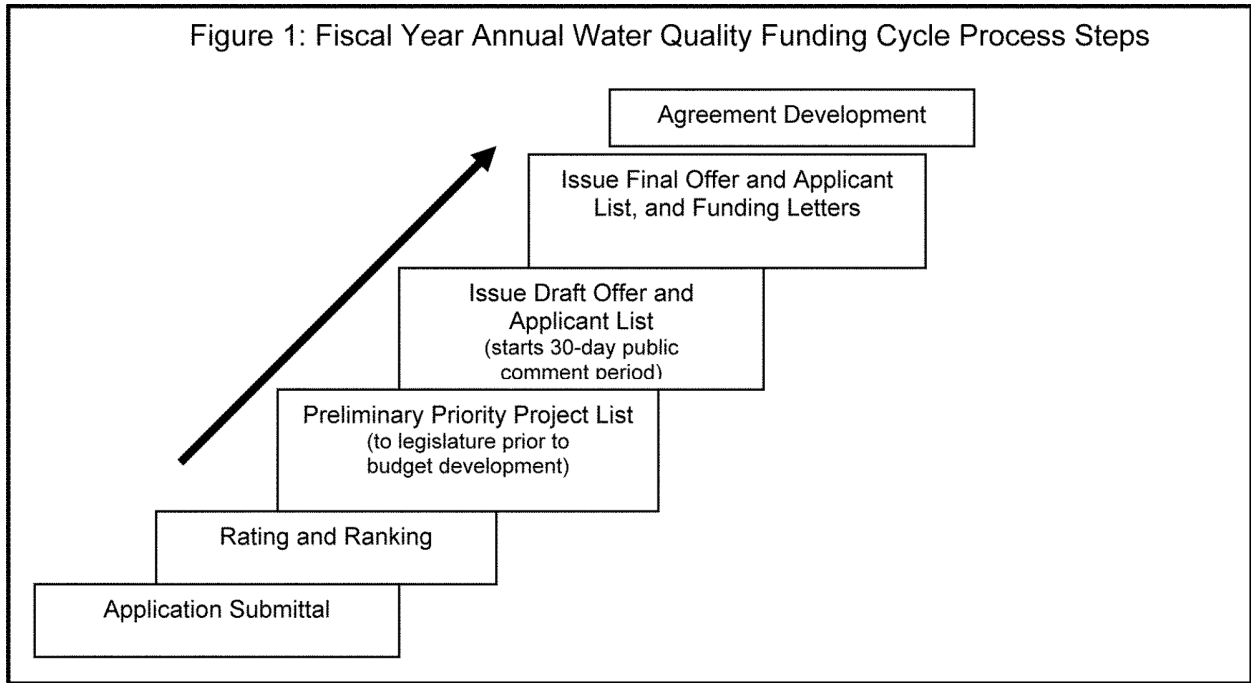
(a) An applicant must receive a minimum score equal to fifty percent of the available points on section three, water quality and public health improvements, of the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than fifty percent of the points available on section three if demand for funding is low; and

(b) An applicant must also receive a minimum score equal to sixty percent of the available points on the entire water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

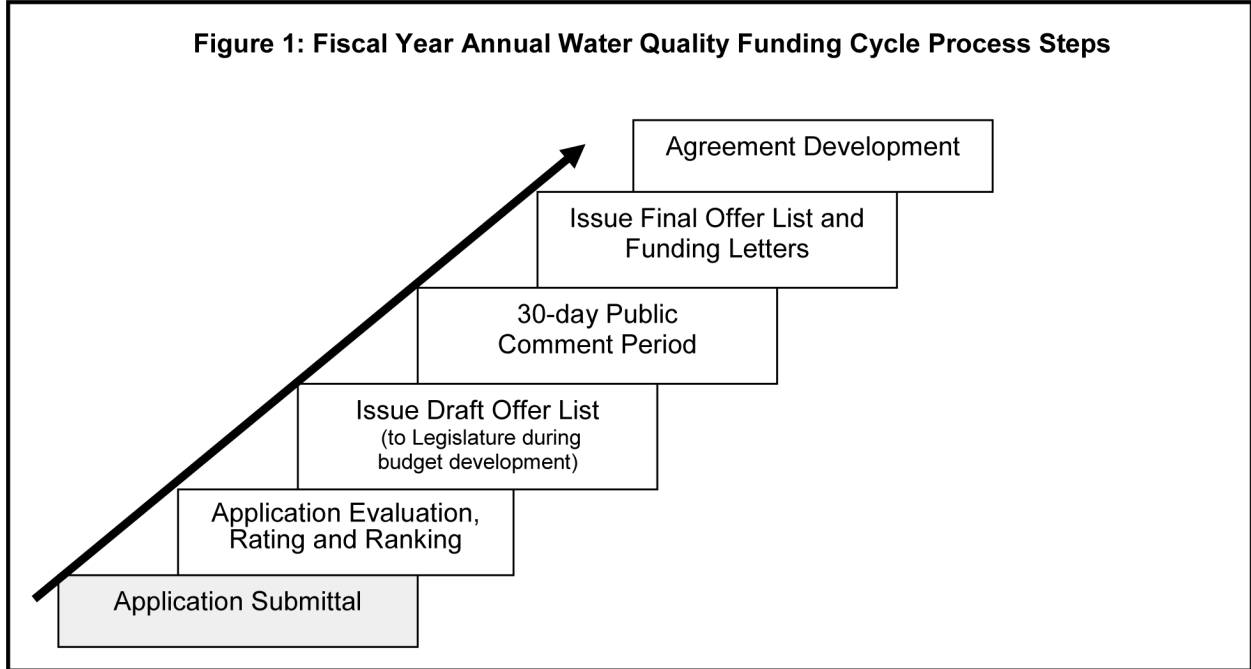
AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

~~((STRICKEN GRAPHIC~~ _____



_____ STRICKEN GRAPHIC))



(2) In general, ecology will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) ((After the application deadline,)) Complete an initial review of project proposals for funding eligibility after the application deadline;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit a preliminary project priority list to the state legislature ((for)) during budget ((consideration)) development;
- (i) Develop a combined *Draft Offer and Applicant List* and a *Draft ((revolving fund)) IUP*;
- (j) Facilitate a public review and comment period for the combined *Draft Offer and Applicant List* and ((revolving fund)) *Draft IUP*;
- (k) Sponsor at least one public meeting to explain the combined *Draft Offer List* and ((Applicant List)) and ((the revolving fund)) *Draft IUP*;
- (l) Develop a combined ((Final Offer and Applicant List)) and a *Final ((revolving fund)) IUP*. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and

(n) Negotiate, develop, and finalize loan agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the ((Final Offer and Applicant List)) will be effective for up to one year from the publication date of the ((Final Offer and Applicant List)). ((Loan offers that do not result in a signed agreement are automatically ((terminated)) ended.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues ((a)) a *Draft IUP and a Final IUP* for each funding cycle.
 (2) The *Final IUP* is issued in conjunction with the ((Final Offer and Applicant List)).
 (3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:
 (a) Service area population;
 (b) Existing residential need at the time of application; and
 (c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using ((the construction cost estimates including)):

- (i) Estimated construction costs;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The ((revolving fund)) annual debt service for the ((funded)) project if funded with a revolving fund loan;
- (vii) Other grants and loans funding the project;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) ((Median household income)) MHI for the project area;

(6) **Figure 2. Loan Hardship-Funding Continuum**

| Sewer User Fee divided by MHI | Below <u>((2.0%))</u> <u>two percent</u> | <u>((2.0%))</u> <u>Two percent and above, but Below ((3.0%)) three percent</u> | <u>((3.0%))</u> <u>Three percent and above, but Below ((5.0%)) five percent</u> | <u>((5.0%))</u> <u>Five percent and above</u> |
|--|---|--|---|--|
| Hardship Designation | <i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant <u>or forgivable principal</u> dollars) | <i>Moderate Hardship</i> | <i>Elevated Hardship</i> | <i>Severe Hardship</i> (Very high sewer user rates in relation to <u>((median household income-))MHI((+))</u>) |
| Loan Hardship-Funding Continuum | Loan at <u>((60%))</u> <u>sixty percent</u> of market rate | Loan at <u>((40%))</u> <u>forty percent</u> of market rate | Loan at <u>((20%))</u> <u>twenty percent</u> of market rate | Loan at <u>((0%))</u> <u>zero percent</u> interest |

(7) Partially funded projects: If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, subject to funding ceilings, in the next funding cycle, and on

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available ((census data)) American community survey data determines the ((median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the Consumer Price Index)) MHI; ((and))

(d) If ((median household income)) MHI data are not available for a community ((or if the community)), the county MHI in which the community resides will be used; and

(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the ((median household income)) MHI for the project area.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years, and forgivable principal loans as specified in WAC 173-98-330.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the ((median household income)) MHI, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-310 On-site ~~((septic))~~ sewage system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site ~~((septic))~~ sewage repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county ~~((median household income))~~ MHI. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

| Homeowner Income is: | ((20)) <u>Twenty-Year Term</u> | ((5)) <u>Five-Year Term</u> | Hardship Level |
|--|---|---|----------------|
| Above ((80%)) <u>eighty percent</u> county MHI | ((60%)) <u>Sixty percent</u> of MR | ((30%)) <u>Thirty percent</u> of MR | Nonhardship |
| ((50-80%)) <u>Fifty - eighty percent</u> county MHI | ((30%)) <u>Thirty percent</u> of MR | Up to ((15%)) <u>fifteen percent</u> of MR | Moderate |
| Below ((50%)) <u>fifty percent</u> county MHI | Up to ((15%)) <u>fifteen percent</u> of MR | ((0%)) <u>Zero percent</u> | Severe |

~~((Figure 4.))~~

(4) Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

| Small Commercial Enterprise Annual Gross Revenue is: | ((20)) <u>Twenty-Year Term</u> | ((5)) <u>Five-Year Term</u> | Hardship Level |
|--|---|--|----------------|
| Above ((100,000)) <u>one hundred thousand dollars</u> | ((60%)) <u>Sixty percent</u> of MR | ((30%)) <u>Thirty percent</u> of MR | Nonhardship |

| Small Commercial Enterprise Annual Gross Revenue is: | ((20)) <u>Twenty-Year Term</u> | ((5)) <u>Five-Year Term</u> | Hardship Level |
|--|---|---|----------------|
| ((50,000-100,000)) <u>Fifty thousand dollars - one hundred thousand dollars</u> | ((30%)) <u>Thirty percent</u> of MR | Up to ((15%)) <u>fifteen percent</u> of MR | Moderate |
| Below ((50,000)) <u>fifty thousand dollars</u> | Up to ((15%)) <u>fifteen percent</u> of MR | ((0%)) <u>Zero percent</u> | Severe |

~~((4))~~ (5) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the ~~((recipient))~~ recipient regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
 - (i) Above ~~((80%))~~ eighty percent of county MHI;
 - (ii) ~~((50 to 80%))~~ Fifty to eighty percent of county MHI;
 - (iii) Below ~~((50%))~~ fifty percent of county MHI.
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above ~~((100,000))~~ one hundred thousand dollars;
 - (ii) ~~((50,000))~~ Fifty thousand dollars to ~~((100,000))~~ one hundred thousand dollars;
 - (iii) Below ~~((50,000))~~ fifty thousand dollars.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-320 ~~((Storm water projects.))~~ Forgivable principal. ~~((1))~~ There are three primary factors in determining financial hardship for storm water projects:

- ~~((a))~~ Service area population;
- ~~((b))~~ Presence of a permit; and
- ~~((c))~~ Community's median household income (MHI).

~~((2))~~ **Service area population, presence of permit, and median household income.** Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.

(4) Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400.

Figure 5.

| | | |
|----------------------------|-----------------|-------------------|
| Service area MHI is: | 20-Year Term | 5-Year Term |
| Above 60% statewide MHI | Not eligible | Not eligible |
| 60% or below statewide MHI | Up to 30% of MR | Up to 15% of MR)) |

(1) Forgivable principal. The department will apply the funding hardship continuum provided in figure 5 below to determine the amount of forgivable principal loan funding provided to an eligible hardship project. Financial hardship will be determined based on the provisions in WAC 173-98-300.

(2) Figure 5. Forgivable principal hardship continuum (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Figure 5.

| | | | | |
|---|--|--|---|--|
| <u>Sewer User Fee divided by MHI</u> | <u>Below two percent</u> | <u>Two percent and above, but Below three percent</u> | <u>Three percent and above, but Below five percent</u> | <u>Five percent and above</u> |
| <u>Hardship Designation</u> | <u>Nonhardship</u> (Low sewer user rates in relation to MHI) | <u>Moderate Hardship</u> | <u>Elevated Hardship</u> | <u>Severe Hardship</u> (Very high sewer user rates in relation to MHI) |
| <u>Loan Hardship-Funding Continuum</u> | Not eligible for forgivable principal loan | Fifty percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520 | Seventy-five percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520 | One hundred percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520 |

NEW SECTION

WAC 173-98-330 Preconstruction category. (1) An applicant can request hardship-funding consideration when submitting a funding application if the service area population is twenty-five thousand or less and the MHI is less than eighty percent of the state MHI.

(2) If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) The most recent available American community survey data determines the MHI.

(4) If MHI data are not available for a community then the county MHI in which the community resides will be used.

(5) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 (~~or 173-98-3040~~) and 173-98-310 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

| | |
|--|---|
| <u>Repayment Period</u> | <u>Interest Rate</u> |
| Up to ((5)) <u>five</u> years: | ((30)) <u>Thirty percent</u> of the average market rate. |
| More than ((5)) <u>five</u> but no more than ((20)) <u>twenty</u> years: | ((60)) <u>Sixty percent</u> of the average market rate. |

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different ((~~regulations~~)) rules: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the ((~~rate payers~~)) ratepayers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-430 Repayment. When a project is complete and all disbursements are made, the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) Equal payments will be due every six months;

(4) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies;

(5) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(6) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms (~~(greater)~~) more than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. (~~(Such)~~) The moneys will be applied to the debt.

PART 5

~~((WATER POLLUTION CONTROL REVOLVING FUND REQUIREMENTS FOR MANAGING LOANS))~~

FUNDING DISTRIBUTION AND PROJECT DEVELOPMENT PROCESS

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-500 Funding categories. (1) The revolving fund is (~~(split)~~) divided into (~~(two)~~) four funding categories:

(a) Green project reserves category: An amount equal to twenty-five percent of the capitalization grant is allocated to the green project reserves category.

(b) Moneys for the green project reserves category are allocated before the remaining revolving fund is divided between the other categories; and

(c) Water pollution control facilities category: (~~(Eighty)~~) After allocating revolving fund moneys to the green project reserves category, seventy-five percent of the remaining revolving fund (~~(is used)~~) will be available for facilities projects as established under section 212 of the act; and

(~~(b)~~) (d) Preconstruction category: After allocating revolving fund moneys to the green project reserves category, five percent of the remaining revolving fund will be available for preconstruction category; and

(e) Water pollution control activities category: After allocating revolving fund moneys to the green project reserves category, twenty percent of the remaining revolving fund will be available for the implementation of programs or projects established under the (~~(the)~~) *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution.* (~~(the)~~)

(2) Forgivable principal.

(a) Additional subsidization in the form of forgivable principal loans may be provided at an amount equal to nine percent of the capitalization grant;

(b) The amount of forgivable principal provided may be adjusted up to an amount equal to thirty percent of the capitalization grant to meet minimum requirements for green project reserves and demand for hardship funding; and

(c) The percentages listed in (a) and (b) of this subsection for forgivable principal offered may be adjusted as required to meet federal laws;

(d) Additional subsidization in the form of forgivable principal loans may be provided for eligible hardship projects, eligible green project reserves projects or project elements, and eligible preconstruction projects.

(3) If the demand is limited in (~~(either)~~) any of the funding (~~(category)~~) categories or to meet funding levels required in federal laws, the department can shift moneys between the funding categories.

(a) The amount of revolving funds dedicated to the green project reserves category may be adjusted as required to meet minimum requirements for forgivable principal or to meet funding levels required in federal laws;

(b) The amount of forgivable principal provided to the green project reserves category may be adjusted as required to meet green project reserves minimum requirements or to meet funding levels required in federal laws.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-520 Ceiling amounts. (1) Green project reserves category:

(a) No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) The ceiling amount for forgivable principal provided for eligible green project reserves projects is up to fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully use available funding.

(2) Preconstruction category:

(a) No more than twenty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is up to fifty percent of the eligible project costs. If demand is limited for projects eligible for preconstruction category, the ceiling amount may be raised to fully use available funding.

(c) The ceiling amount for this category applies to the combined total of all preconstruction elements for loans and forgivable principal loans.

(3) Water pollution control facilities category:

(a) ~~((Not))~~ No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; ~~(and)~~

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is five million dollars. If a forgivable principal loan is provided for a hardship project in conjunction with a centennial program grant award for hardship, then the ceiling amount for the combined forgivable principal loan and centennial program grant is five million dollars; and

(c) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

~~((2))~~ **(4) Water pollution control activities category:** Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

~~((3))~~ Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund monies, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

~~((4))~~ **(5) Water pollution control facilities construction bid overruns:**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

~~((5))~~ **(6) Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(7) If a project qualifies for both hardship funding and green project reserves funding, then the ceiling amount for total forgivable principal and centennial grant funding for the project is the combined ceiling amount of both hardship and green project reserves categories.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years ~~((prior to))~~ before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and

approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-550 (~~Declaration of construction after project completion.~~) **Preconstruction category.** (~~Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.~~) **Eligibility.** Only applicants with a population of twenty-five thousand or less and a median household income below the state median household income are eligible for funding in the preconstruction category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-560 (~~Performance measures and post-project assessment.~~) **Approval of plans and specifications.** (~~(1) The department may require a recipient to develop and implement a postproject assessment plan.~~)

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.) The department must approve all plans and specifications before solicitation of bids according to chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-600 Design-build and design-build-operate project requirements. (1) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

(2) The (~~design and~~) construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate and a forgivable principal loan if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

(3) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate and a forgivable principal loan may be available for the (~~design and~~) construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to (~~utilize~~) use the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded (~~(prior to)~~) before the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded; and

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810(~~; and~~

~~(n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund).~~)

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and

local laws and ~~((regulations))~~ rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-710 The Growth Management Act. (1)

A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that ~~((is required to))~~ must or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in ~~((such))~~ the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.

(1) Prior authorization to incur eligible costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the *Final IUP*;

(ii) Costs are incurred between the publication date of the ~~((⁽²⁾))~~ *Final Offer and Applicant* ~~((⁽²⁾))~~ *List* and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred ~~((prior to))~~ before the publication date of the ~~((⁽²⁾))~~ *Final Offer and Applicant* ~~((⁽²⁾))~~ *List* are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan offers identified on the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) will be effective for up to one year from the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) ~~Local~~ Loan offers that do not result in a signed agreement are automatically ((~~terminated~~)) ended, see WAC 173-98-220 ((~~Final offer and applicant list~~)).

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made ((~~prior to~~)) before the completion or expiration date of the loan agreement.

NEW SECTION

WAC 173-98-820 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.

NEW SECTION

WAC 173-98-830 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-900 ((~~Water pollution control~~)) Revolving fund ((~~revolving fund~~)) perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-920 Appealing a department decision.

If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to ((~~such~~)) the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for ((~~such~~)) the damage, claim, or

liability resulting from the negligence or omission of the department.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

- (a) Request certification authority;
 - (b) Document that it has the capability and resources;
 - (c) Document that it is in the best interest of the state; and
 - (d) Demonstrate that the request is consistent with state and federal laws and ~~((regulations))~~ rules.
- (2) Concurrences required in the environmental review process cannot be delegated to recipients.

WSR 11-20-041

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed September 28, 2011, 12:13 p.m., effective October 29, 2011]

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

Purpose: Amend chapter 308-330 WAC, the model traffic ordinance (MTO), to include violations enacted by the legislature in the 2011 legislative session, and to update section citations to sections of law recodified or replaced during the 2010 and 2011 legislative sessions.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-200, 308-330-300, 308-330-305, 308-330-425, 308-330-464, and 308-330-700.

Statutory Authority for Adoption: RCW 46.90.010.

Adopted under notice filed as WSR 11-17-114 on August 23, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

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

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

Date Adopted: September 28, 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW (~~(46.09.020, 46.09.040, 46.09.050, 46.09.085, 46.09.115, 46.09.117, 46.09.120, 46.09.130, 46.09.140, 46.09.180, and 46.09.190)~~) 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.420, 46.09.440, 46.09.450, 46.09.460, 46.09.470, 46.09.480, and 46.09.490.

AMENDATORY SECTION (Amending WSR 97-10-068, filed 5/5/97, effective 6/5/97)

WAC 308-330-200 RCW sections adopted—Snowmobiles. The following sections of the Revised Code of Washington (RCW) pertaining to snowmobiles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW (~~(46.10.010, 46.10.020, 46.10.090, 46.10.100, 46.10.110, 46.10.120, 46.10.130, 46.10.140, and 46.10.190)~~) 46.10.300, 46.10.310, 46.10.330, 46.10.460, 46.10.470, 46.10.480, 46.10.490, 46.10.495, and 46.10.500.

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

AMENDATORY SECTION (Amending WSR 99-04-070, filed 2/1/99, effective 3/4/99)

WAC 308-330-300 RCW sections adopted—Certificates of ownership and registration. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle certificates of ownership and registrations as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW (~~(46.12.005, 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.103, 46.12.160, 46.12.210, 46.12.215, 46.12.220, 46.12.250, 46.12.260, 46.12.270, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, and 46.12.380)~~) 46.12.550, 46.12.590, 46.12.600, 46.12.635, 46.12.650, 46.12.655, 46.12.660, 46.12.720, 46.12.725, 46.12.730, 46.12.735, 46.12.740, 46.12.745, 46.12.750, and 46.12.755.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04, effective 9/27/04)

WAC 308-330-305 RCW sections adopted—Vehicle licenses. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle licenses as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW (~~(46.16.010, 46.16.011, 46.16.022,~~

~~46.16.023, 46.16.025, 46.16.028, 46.16.030, 46.16.048, 46.16.068, 46.16.088, 46.16.090, 46.16.135, 46.16.140, 46.16.145, 46.16.160, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.307, 46.16.30901, 46.16.30903, 46.16.30905, 46.16.316, 46.16.350, 46.16.381, 46.16.385, 46.16.390, 46.16.500, 46.16.505, 46.16.560, 46.16.585, 46.16.595, 46.16.630, 46.16.640, and 46.16.680)~~ 46.12.695, 46.16A.030, 46.16A.140, 46.16A.160, 46.16A.175, 46.16A.180, 46.16A.200, 46.16A.320, 46.16A.350, 46.16A.405, 46.16A.420, 46.16A.425, 46.16A.450, 46.16A.500, 46.16A.520, 46.16A.530, 46.16A.540, 46.16A.545, 46.18.200, 46.18.205, 46.18.215, 46.18.220, 46.18.235, 46.18.275, 46.18.277, 46.18.285, 46.19.050, and 46.19.070.

AMENDATORY SECTION (Amending WSR 99-04-070, filed 2/1/99, effective 3/4/99)

WAC 308-330-425 RCW sections adopted—Reckless driving, negligent driving, vehicular homicide and assault. The following sections of the Revised Code of Washington (RCW) pertaining to reckless driving, driving while under the influence of intoxicating liquor or any drug, vehicular homicide and assault as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.500, 46.61.502, 46.61.503, 46.61.504, 46.61.5054, 46.61.5055, 46.61.50571, 46.61.5058, 46.61.506, 46.61.513, 46.61.517, 46.61.519, 46.61.5191, 46.61.5195, 46.61.5249, 46.61.525, 46.61.527, 46.61.530, 46.61.535, 2011 c 372 s 1, and 46.61.540.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, 2011 c 121 s 2, 2011 c 121 s 4, and 46.61.740.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions. The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040,

46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, 46.63.160, 2011 c 375 s 2, and 46.63.170.

WSR 11-20-047

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 29, 2011, 9:41 a.m., effective October 30, 2011]

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

Purpose: The rule-making order amends chapter 16-08 WAC to clarify the director's designees for the presiding officer and reviewing officer roles in adjudicative proceedings and to clarify how a request for hearing is timely filed with the agency.

Citation of Existing Rules Affected by this Order: Amending WAC 16-08-002, 16-08-021, 16-08-031, and 16-08-141.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Adopted under notice filed as WSR 11-15-045 on July 14, 2011.

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

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

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

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

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

Date Adopted: September 27, 2011.

Dan Newhouse
Director

AMENDATORY SECTION (Amending Order 5081, filed 8/23/95, effective 9/23/95)

WAC 16-08-002 Definitions. The definitions (~~set forth~~) in this section (~~shall~~) apply (~~throughout~~) to this chapter unless the context otherwise requires:

~~((+))~~ "Date of service" means the date the department places a properly dated and stamped document into the United States Postal Service or other mail service for delivery.

"Department" means the department of agriculture of the state of Washington.

~~((=))~~ "Director" means the director of the department of agriculture.

~~((=))~~ "Presiding officer" means the person designated by the director to preside over adjudicative proceedings.

"Reviewing officer" means the ~~((deputy))~~ director ~~((or administrative regulations analyst of the department of agriculture, who the director hereby designates to exercise all decision-making powers to review initial orders, and prepare and enter final orders for the director of agriculture pursuant to RCW 34.05.464(2), or the director of agriculture. The reviewing officer shall mean the director in those cases where the deputy director has acted as the presiding officer))~~ of agriculture or the person designated by the director to review initial orders and prepare and enter final orders for the director.

AMENDATORY SECTION (Amending Order 5081, filed 8/23/95, effective 9/23/95)

WAC 16-08-021 Presiding officer. (1) In matters involving an adjudicative proceeding, the director will designate the presiding officer ((for an adjudicative proceeding)). The presiding officer may be:

(a) ~~((In matters involving an adjudicative proceeding, the director may designate as presiding officer))~~ An administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW~~((;))~~; or

~~(b) The deputy director~~((, the))~~; or~~

~~(c) An assistant director~~((, agency operations division, the assistant director, laboratory services division))~~; or ((the administrative regulations analyst of the department;~~

~~(b) In matters involving an emergency or brief adjudicative proceeding or involving a proceeding pursuant to WAC 16-08-022, the director may designate in writing staff persons to function as the presiding officer-))~~ (d) A staff person trained to act as a presiding officer in adjudicative proceedings.

(2) A person who has served as an investigator, prosecutor, or advocate in any stage of an adjudicative proceeding or someone who is subject to the authority or direction of such a person, may not serve as a presiding officer in the same proceeding.

(3) The presiding officer ~~((shall have))~~ has the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Issue subpoenas;

(d) Rule on procedural matters, objections, and motions;

(e) Rule on offers of proof and receive relevant evidence;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(h) Take any appropriate action necessary to maintain order during the hearing;

(i) Permit or require oral argument or briefs and determine the time limits for their submission ~~((thereof))~~;

(j) Take any other action necessary and authorized by any applicable statute or rule;

(k) Waive any requirement of these rules unless a party shows that ~~((#))~~ he or she would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 97-14-050, filed 6/27/97, effective 7/28/97)

WAC 16-08-031 ((Application for adjudicative proceeding-)) Request for hearing—Filing. ~~((An application for an adjudicative proceeding shall be made on a form provided by the department. Written application for an adjudicative proceeding shall be received at the address designated on the application form within twenty-five days of service of the proposed department action giving rise to the application unless provided for otherwise by statute or rule-))~~ (1) A request for hearing (application for adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within twenty-five days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (e-mail) only when instructions for e-mail filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives his or her right to a hearing.

AMENDATORY SECTION (Amending WSR 97-14-050, filed 6/27/97, effective 7/28/97)

WAC 16-08-141 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where not violative of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. Those circumstances may include:

(a) Actions taken by the agency based on the failure:

(i) To maintain, supply, or display records; and/or

(ii) To display evidence of a license; and/or

(iii) To display or post information required by law; and/or

(iv) To possess required insurance, bonding or other security.

(b) Actions taken with respect to late application renewal fees.

(c) Actions taken with respect to certificate of compliance agreements under WAC 16-461-010.

(d) Actions taken with respect to sale permits pursuant to RCW 15.13.270.

(e) Actions taken to revoke certification of plant material as foundation or breeder planting stock pursuant to RCW 15.14.110.

(f) Penalty actions taken with respect to cattle breed name use.

(g) Penalty actions taken against milk producers pursuant to RCW 15.36.115 or 15.36.595.

(h) Dairy degrade or permit suspension actions taken pursuant to chapter 15.36 RCW.

(i) Actions taken with respect to licenses for sale of milk for animal food pursuant to RCW 15.37.030 et seq.

(j) Actions taken with respect to registration of commercial feed pursuant to RCW 15.53.9036.

(k) Actions taken with respect to pesticide registration under RCW 15.58.110.

(l) Actions taken with respect to organic certification pursuant to RCW 15.86.060 and/or 15.86.070.

(m) Actions taken with respect to mushroom buyer or dealer licenses pursuant to RCW 15.90.020.

(n) Actions taken with respect to animal health certificates pursuant to RCW 16.36.050.

(o) Actions taken with respect to destruction or treatment of quarantined animals pursuant to RCW 16.36.090.

(p) Actions taken with respect to licenses for garbage feeding to swine pursuant to RCW 16.36.108.

(q) Actions taken with respect to licenses related to custom farm slaughter pursuant to chapter 16.49 RCW.

(r) Actions taken with respect to licenses related to custom meat facilities pursuant to chapter 16.49 RCW.

(s) Actions taken with respect to approval of livestock pens within feedlots pursuant to RCW 16.58.080.

(t) Actions taken with respect to certified feed lot licenses pursuant to RCW 16.58.130.

(u) Actions taken with respect to seizure and destruction of incorrect weights and measures pursuant to RCW 19.24.250.

(v) Actions taken with respect to licenses of grain dealers or warehousemen pursuant to RCW 22.09.471.

(w) Revocation of compliance agreements for the completion of state phytosanitary, sanitation, or brown garden snail certificates pursuant to chapters 15.13 and 17.24 RCW.

(x) Revocation of compliance agreements for preprinting or use of rubber stamps for nursery stock inspection certificates pursuant to chapter 15.13 RCW.

(y) Revocation of compliance agreements for root sampling of nursery stock pursuant to chapter 15.13 RCW.

~~((aa))~~ (z) Agency refusal to certify seed stocks because of misleading or confusing labeling pursuant to chapter 15.60 RCW and WAC 16-316-345.

~~((bb))~~ (aa) Rescinding of permit for seed conditioning pursuant to chapter 15.60 RCW and WAC 16-316-185(8).

~~((cc))~~ (bb) Expulsion from or refusal to allow entry into a seed or plant certification program pursuant to chapters 15.60 and 15.13 RCW.

(2) A party to a brief adjudicative hearing has ~~((twenty))~~ twenty-five days to file an application or request from the date of service of the department's notice of intent to take action. The application or request for a brief adjudicative hearing shall be filed at the address listed on the form provided by the department. The party filing the application or request for a brief adjudicative proceeding shall submit a written explanation of their view of the matter along with the application or request. Other parties may file a written response within ten days after service of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties. Oral statements may be submitted and considered as follows:

(a) If a party to a brief adjudicative proceeding desires an opportunity to make an oral statement, it should be requested in the application or request.

(b) A request to make an oral statement may be granted if the presiding officer believes such a statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of the decision to grant or deny the request to hear oral comments, and if the request is granted, shall notify the parties of the time and place for hearing comments.

(3) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The presiding officer's written decision is an initial order. If no review is taken of the initial order, it shall be the final order.

(5) The reviewing officer shall conduct a review of an initial order resulting from a brief adjudicative proceeding upon the written or oral request of a party if the director receives the request within twenty-one days from the service of the initial order. If no request is filed in a timely manner, the reviewing officer may review, on his or her own motion, an order resulting from a brief adjudicative proceeding and adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain his or her view of the matter.

(6) A request for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. The request for review shall be filed with the director and copies shall be served on all parties, and evidence of such service filed. Responses to a request for review of an initial order shall be filed with the director and served on all parties within ten days after service of the request for review.

(7) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(8) The record in a brief adjudicative proceeding shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding and/or by the reviewing officer for any review.

WSR 11-20-066

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 3, 2011, 10:18 a.m., effective November 3, 2011]

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

Purpose: To clarify the requirements for registering a fleet, and reducing the number of required vehicles in a permanent fleet.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-161 Fleet registration.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 11-17-020 on August 5, 2011.

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

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

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

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

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

Date Adopted: September 28, 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-11-079, filed 5/14/02, effective 6/14/02)

WAC 308-96A-161 Fleet registration. (1) **What is the purpose of the fleet program?** ~~The ((department recognizes and understands that there are businesses)) purpose of the fleet program is to provide a process for business and individual registered owners ((within the state of Washington that have a valid need)) to ((license)) have the same expiration date for all of their vehicles ((on the same date)) and to receive a single billing notice. ((The purpose of the fleet program is to provide such a process.))~~

(2) **What types of fleet programs are available?** There are two types of fleet programs((=

(a) **Regular fleet** – To participate in the regular fleet program, the owner(s) must:

~~((i) Have))~~, regular and permanent.

(3) What is the difference between a regular and a permanent fleet?

(a) **Regular fleets** consist of five or more vehicles, all currently ~~((registered for highway use; and~~

(ii) All vehicles participating must be) titled and registered in exact name agreement (letter for letter and space for space)((; and

(iii) All vehicles participating will be assigned a December 31 annual expiration). ~~The owner has the option to purchase monthly gross weight license ((may be purchased for vehicles participating in the regular fleet program; and~~

(iv) A fleet account will be established by the department and a fleet identifier code issued to the participant).

(b) **Permanent fleets**((=To participate in the permanent fleet program, the owner must:

(i) Have one hundred or more vehicles all currently registered for highway use; and

(ii) Have all participating vehicles titled and registered in exact name agreement (letter for letter and space for space); and

(iii) Have all participating vehicles assigned a December 31 annual expiration. Monthly gross weight license may **not** be purchased for vehicles participating in the permanent fleet program however, gross weight increase can be purchased throughout the year.

A fleet account will be established by the department and a fleet identifier code issued to the participant.

~~((3))~~ consist of fifty or more vehicles, all currently titled and registered in exact name agreement (letter for letter and space for space). The owner must purchase gross weight for the entire year. Gross weight license may **NOT** be purchased month to month, but may be increased throughout the year.

(4) When do fleet vehicles expire? All fleet vehicles will be assigned a December 31 expiration date.

(5) Who does a fleet owner contact to join the fleet program? ~~((Any owner who meets the qualifications may contact the department or your local Washington vehicle licensing office.~~

~~((4))~~ Fleet owners who meet the qualifications may contact the department or their local vehicle licensing office to have a fleet account established and a fleet identifier code issued.

(6) Are there any vehicles that may not be part of a fleet? Yes, ~~((there are vehicles that may not be part of a fleet. Those))~~ the following vehicles ~~((include))~~ may not be part of the fleet program:

(a) Snowmobiles;

(b) Trailers with ~~((plates issued a))~~ permanent license plates issued under RCW ~~((46.16.068))~~ 46.16A.450;

(c) ~~((Vehicles licensed as daily rental under RCW 82.44.023))~~ Rental vehicles as defined in RCW 46.04.465; ~~((or))~~

(d) Any vehicle not required to renew annually ~~((renew. f)); and~~

(e) Prorate vehicles registered under ~~((the international registration program f))~~ proportional registration as defined in chapter 46.87 RCW ~~((cannot be part of this fleet program))~~.

~~((5))~~ **(7) Will the department remove ((me)) a fleet from the fleet program?** Yes, the department will remove a ~~((participant))~~ fleet from the ~~((fleet))~~ program at ~~((their))~~ the request of the owner or if the ~~((required minimum))~~ number of ~~((currently))~~ registered vehicles ~~((is not maintained for the chosen fleet program))~~ in the fleet drops below the required minimum.

(8) What happens to a fleet once it is removed from the fleet program? When a fleet is removed from the program the fleet identifier code will be ~~((automatically canceled and will cause removal of))~~ removed from all of the ~~((participant's))~~ vehicles ~~((from the chosen fleet program))~~ in the fleet. The owner will then be required to renew them individually.

WSR 11-20-092

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 4, 2011, 2:57 p.m., effective December 1, 2011]

Effective Date of Rule: December 1, 2011.

Purpose: The adopted rules increase fees for the professions listed below as authorized by the 2011 legislature (2ESHB 1087, chapter 50, Laws of 2011 1st sp. sess. PV). The adopted rules also make general housekeeping edits and complete language clean-up. These fee increases are necessary for programs to remain in operation and ensure patient safety.

Citation of Existing Rules Affected by this Order: Amending 246-808-990 Chiropractic fees and renewal cycle, 246-822-990 Dietitian and nutritionist fees and renewal cycle, 246-826-990 Health care assistant fees and renewal cycle, 246-828-990 Hearing instrument fitter/dispenser, audiologist, speech language pathologist, and speech language pathology assistant fees and renewal cycle (increases do not include speech language pathology assistants), 246-810-990 Counselors fees and renewal cycle (registered hypnotherapist), 246-843-990 Nursing home administrator fees and renewal cycle, 246-847-990 Occupational therapy fees and renewal cycle, 246-850-990 Orthotic and prosthetic fees, 246-907-030 Pharmaceutical licensing periods and fees, 246-924-990 Psychology fees and renewal cycle, 246-939-990 Surgical technologists—Fees and renewal cycle, 246-933-990 Veterinarian fees and renewal cycle, 246-937-990 Veterinary medication clerk fees and renewal cycle, 246-935-990 Veterinary technician fees and renewal cycle, and 246-933-590 Humane society and animal control agency (entity) fees and renewal cycle.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250.

Other Authority: 2ESHB 1087, chapter 50, Laws of 2011 1st sp. sess. PV.

Adopted under notice filed as WSR 11-16-107 on August 3, 2011.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 15, Repealed 0.

Date Adopted: October 4, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2. ((The secretary may require payment of

renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(2) The following nonrefundable fees will be charged for chiropractic license:

| Title of Fee | Fee |
|--|--|
| Application/full examination or reexamination | \$(575.00) <u>630.00</u> |
| Temporary permit application | ((150.00)) <u>205.00</u> |
| Temporary practice permit | ((50.00)) <u>105.00</u> |
| Preceptorship | ((100.00)) <u>155.00</u> |
| License renewal | ((520.00)) <u>582.00</u> |
| Late renewal penalty | ((260.00)) <u>302.00</u> |
| Expired license reissuance | ((260.00)) <u>302.00</u> |
| Inactive license renewal | ((200.00)) <u>257.00</u> |
| Expired inactive license reissuance | ((100.00)) <u>157.00</u> |
| Duplicate license | ((15.00)) <u>30.00</u> |
| Certification of license | ((25.00)) <u>30.00</u> |
| UW (library) <u>on-line</u> access fee (<u>HEAL-WA</u>) | 25.00 |

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

| Title of Fee | Fee |
|---------------------------------|--------------------------------------|
| Application | ((35.00)) <u>47.00</u> |
| Original registration | ((35.00)) <u>47.00</u> |
| Renewal | ((50.00)) <u>62.00</u> |
| Late renewal penalty | ((50.00)) <u>62.00</u> |
| Expired registration reissuance | ((50.00)) <u>62.00</u> |
| Duplicate registration | ((15.00)) <u>30.00</u> |

| Title of Fee | Fee |
|-------------------------------|---------------------------|
| Certification of registration | ((25.00)) <u>30.00</u> |

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, Part 2, a counselor must renew his or her credential every year on the practitioner's birthday.

(2) Any separate examination fees are the responsibility of the applicant.

| Title | Fee |
|---|---------------------|
| (3) ((The following nonrefundable fees will be charged for registered counselor through 6/30/2010: | |
| Renewal | \$117.00 |
| Late renewal penalty | 58.50 |
| Expired registration reissuance | 65.00 |
| Duplicate registration | 15.00 |
| Certification of registration | 15.00 |

(4)) The following nonrefundable fees will be charged for registered hypnoterapist:

| | |
|---------------------------------|----------------------------|
| Application and registration | ((95.00)) <u>155.00</u> |
| Renewal | ((130.00)) <u>80.00</u> |
| Late renewal penalty | ((65.00)) <u>75.00</u> |
| Expired registration reissuance | ((65.00)) <u>75.00</u> |
| Duplicate registration | ((15.00)) <u>30.00</u> |
| Certification of registration | ((15.00)) <u>30.00</u> |

((5)) The following nonrefundable fees will be charged for certified counselor:

(4)

| | |
|-------------------------------|--------|
| Application and certification | 110.00 |
| Examination or reexamination | 85.00 |
| Renewal | 90.00 |
| Late renewal penalty | 50.00 |
| Expired credential reissuance | 50.00 |
| Duplicate credential | 15.00 |
| Certification of credential | 15.00 |

((6)) The following nonrefundable fees will be charged for certified adviser:

(5)

| | |
|-------------------------------|-------|
| Application and certification | 80.00 |
| Examination or reexamination | 85.00 |

| Title | Fee |
|-------------------------------|-------|
| Renewal | 65.00 |
| Late renewal penalty | 50.00 |
| Expired credential reissuance | 50.00 |
| Duplicate credential | 15.00 |
| Certification of credential | 15.00 |

((7)) The following nonrefundable fees will be charged for registered agency affiliated counselor:

(6)

| | |
|---------------------------------|-------|
| Application and registration | 50.00 |
| Renewal | 40.00 |
| Late renewal penalty | 40.00 |
| Expired registration reissuance | 40.00 |
| Duplicate registration | 15.00 |
| Certification of registration | 15.00 |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-822-990 Dietitian and nutritionist fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

| Title | Fee |
|--------------------------------|------------------------------|
| Application | \$((75.00)) <u>100.00</u> |
| Renewal | ((45.00)) <u>70.00</u> |
| Late renewal penalty | ((45.00)) <u>50.00</u> |
| Expired certificate reissuance | ((45.00)) <u>50.00</u> |
| Duplicate certificate | ((15.00)) <u>30.00</u> |
| Certification of certificate | ((25.00)) <u>30.00</u> |

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-826-990 Health care assistant fees and renewal cycle. (1) Certificates must be renewed every two years as provided in WAC 246-826-050 and chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of~~

renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.)

(2) If a health care assistant who holds a current active credential leaves employment with a facility or practitioner and returns to employment with a facility or practitioner that previously employed the health care assistant, and more than two years has passed since that health care assistant's employment with the previous facility or practitioner ended, the health care assistant must complete a new credential application and pay the application fee. However, that health care assistant is not required to pay the late renewal penalty and the expired credential reissuance fee.

(3) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|-------------------------------|--|
| Initial certification | \$(405.00) <u>113.00</u> |
| Renewal | ((405.00)) <u>113.00</u> |
| Expired credential reissuance | ((52.50)) <u>55.00</u> |
| Recertification | ((400.00)) <u>108.00</u> |
| Late renewal penalty | ((52.50)) <u>55.00</u> |
| Duplicate <u>certificate</u> | ((15.00)) <u>30.00</u> |

AMENDATORY SECTION (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

WAC 246-828-990 Hearing instrument fitter/dispenser, audiologist, speech language pathologist, and ~~((speech language))~~ speech language pathology assistant fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) Practitioners must pay the following nonrefundable fees:

Audiologist~~((Speech Language))~~ or Speech Language Pathologist

| Fee Type: | Fee |
|---|--|
| Interim permit | |
| Application | \$(125.00) <u>165.00</u> |
| Permit | ((100.00)) <u>140.00</u> |
| Initial license | |
| Application | ((125.00)) <u>165.00</u> |
| License | ((100.00)) <u>140.00</u> |
| Renewal | ((200.00)) <u>110.00</u> |
| Inactive license | ((75.00)) <u>60.00</u> |
| Late renewal penalty | ((100.00)) <u>90.00</u> |
| Expired license reissuance | ((100.00)) <u>140.00</u> |
| Expired inactive license reissuance | ((50.00)) <u>90.00</u> |
| <u>Certification of license</u> ((verification | 15.00)) <u>30.00</u> |
| Duplicate license | ((15.00)) <u>30.00</u> |

Hearing Instrument Fitter/Dispenser

| Fee Type: | Fee |
|---|--|
| License application | \$(125.00) <u>165.00</u> |
| Initial license | ((100.00)) <u>140.00</u> |
| Renewal | ((200.00)) <u>110.00</u> |
| Inactive license | ((75.00)) <u>60.00</u> |
| Late renewal penalty | ((100.00)) <u>90.00</u> |
| Expired license reissuance | ((100.00)) <u>136.00</u> |
| Expired inactive license reissuance | ((50.00)) <u>86.00</u> |
| <u>Certification of license</u> ((verification | 15.00)) <u>30.00</u> |
| Duplicate license | ((15.00)) <u>30.00</u> |

~~((Speech Language))~~ **Speech Language Pathology Assistant**

| Fee Type: | Fee |
|---|----------|
| Application | \$125.00 |
| Renewal | 70.00 |
| Inactive credential | 50.00 |
| Late renewal penalty | 50.00 |
| Expired credential reissuance | 50.00 |
| Expired inactive credential reissuance | 50.00 |
| <u>Certification of credential ((verification))</u> | 15.00 |
| Duplicate credential | 15.00 |

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-843-990 Nursing home administrator fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|-------------------------------------|---|
| Application - Original license | \$(275.00)) <u>410.00</u> |
| Administrator-in-training | ((150.00)) <u>285.00</u> |
| Application - Endorsement | ((375.00)) <u>510.00</u> |
| Temporary permit | ((190.00)) <u>325.00</u> |
| Renewal | ((360.00)) <u>495.00</u> |
| Inactive license renewal | ((180.00)) <u>315.00</u> |
| Late renewal penalty | ((180.00)) <u>315.00</u> |
| Expired license reissuance | ((147.50)) <u>285.00</u> |
| Late renewal penalty - inactive | ((90.00)) <u>255.00</u> |
| Expired inactive license reissuance | ((55.00)) <u>190.00</u> |
| Duplicate license | ((15.00)) <u>30.00</u> |

| Title of Fee | Fee |
|--------------------------|--------------------------------------|
| Certification of license | ((15.00)) <u>30.00</u> |

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-847-990 Occupational therapy fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged for occupational therapist:

| Title of Fee | Fee |
|-------------------------------------|---|
| Application and initial license fee | \$(160.00)) <u>175.00</u> |
| License renewal | ((130.00)) <u>145.00</u> |
| Limited permit fee | ((40.00)) <u>55.00</u> |
| Late renewal fee | ((65.00)) <u>80.00</u> |
| Expired license reissuance | ((65.00)) <u>80.00</u> |
| Inactive license | ((40.00)) <u>15.00</u> |
| Expired inactive license reissuance | ((40.00)) <u>15.00</u> |
| Duplicate <u>license</u> | ((15.00)) <u>30.00</u> |
| Certification of license | ((25.00)) <u>30.00</u> |

(3) The following nonrefundable fees will be charged for ~~((occupational))~~ occupational therapy assistant:

| Title of Fee | Fee |
|-------------------------------------|--|
| Application and initial license fee | ((160.00)) <u>175.00</u> |
| License renewal | ((140.00)) <u>125.00</u> |
| Late renewal fee | ((55.00)) <u>70.00</u> |
| Expired license reissuance | ((55.00)) <u>70.00</u> |

| Title of Fee | Fee |
|-------------------------------------|---------------------------|
| Inactive license | ((10.00)) <u>15.00</u> |
| Expired inactive license reissuance | ((10.00)) <u>14.00</u> |
| Limited permit fee | ((40.00)) <u>45.00</u> |
| Duplicate <u>license</u> | ((15.00)) <u>30.00</u> |
| Certification of license | ((25.00)) <u>30.00</u> |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-850-990 Orthotic and prosthetic fees. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|---|------------------------------------|
| Orthotic application | \$((250.00)) <u>395.00</u> |
| Prosthetic application | ((250.00)) <u>395.00</u> |
| Orthotic renewal | ((150.00)) <u>190.00</u> |
| Prosthetic renewal | ((150.00)) <u>190.00</u> |
| Late renewal penalty fee | ((75.00)) <u>190.00</u> |
| Expired credential reissuance fee | ((75.00)) <u>190.00</u> |
| Inactive credential renewal fee | ((125.00)) <u>135.00</u> |
| Late inactive renewal fee | ((62.50)) <u>135.00</u> |
| Retired active credential renewal fee | ((125.00)) <u>135.00</u> |
| Late retired active credential renewal fee | ((62.50)) <u>135.00</u> |
| Duplicate credential ((or wall certificate | 15.00)) <u>30.00</u> |
| Certification of <u>credential</u> | ((25.00)) <u>30.00</u> |

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-907-030 Pharmaceutical licensing periods and fees—Fees and renewal cycle. (1) Pharmacist, pharmacy technician, and pharmacy intern licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) Pharmacy location, controlled substance registration (pharmacy), pharmacy technician utilization, and shopkeepers differential hours licenses will expire on June 1 of each year.

(3) All other licenses, including health care entity licenses, registrations, permits, or certifications will expire on October 1 of each year.

(4) The following nonrefundable fees will be charged for pharmacy location:

| Title of fee | Fee |
|--|-------------------------------|
| Original pharmacy fee | \$((365.00)) <u>370.00</u> |
| Original pharmacy technician utilization fee | 65.00 |
| Renewal pharmacy fee | ((400.00)) <u>405.00</u> |
| Renewal pharmacy technician utilization fee | 75.00 |
| Penalty pharmacy fee | ((200.00)) <u>205.00</u> |

(5) The following nonrefundable fees will be charged for vendor:

| | |
|--------------|-------|
| Original fee | 75.00 |
| Renewal fee | 75.00 |
| Penalty fee | 50.00 |

(6) The following nonrefundable fees will be charged for pharmacist:

| | |
|--|-----------------------------|
| Original license fee | ((130.00)) <u>145.00</u> |
| Renewal fee, active and inactive license | ((170.00)) <u>190.00</u> |
| Renewal fee, retired license | ((20.00)) <u>25.00</u> |
| Penalty fee | ((85.00)) <u>100.00</u> |
| Expired license reissuance (active and inactive) | ((85.00)) <u>90.00</u> |

| Title of fee | Fee |
|---|-----------------------------|
| Reciprocity fee | ((330.00)) <u>335.00</u> |
| Certification of license status to other states | ((20.00)) <u>30.00</u> |
| Retired license | ((20.00)) <u>25.00</u> |
| Temporary permit | 65.00 |

(7) The following nonrefundable fees will be charged for shopkeeper:

| | |
|---------------------------------------|---------------------------|
| Original fee | ((35.00)) <u>40.00</u> |
| Renewal fee | ((35.00)) <u>40.00</u> |
| Penalty fee | ((35.00)) <u>40.00</u> |
| Shopkeeper - with differential hours: | |
| Original fee | 35.00 |
| Renewal fee | 35.00 |
| Penalty fee | 35.00 |

(8) The following nonrefundable fees will be charged for drug manufacturer:

| | |
|--------------|--------|
| Original fee | 590.00 |
| Renewal fee | 590.00 |
| Penalty fee | 295.00 |

(9) The following nonrefundable fees will be charged for drug wholesaler - Full line:

| | |
|--------------|--------|
| Original fee | 590.00 |
| Renewal fee | 590.00 |
| Penalty fee | 295.00 |

(10) The following nonrefundable fees will be charged for drug wholesaler - OTC only:

| | |
|--------------|--------|
| Original fee | 330.00 |
| Renewal fee | 330.00 |
| Penalty fee | 165.00 |

(11) The following nonrefundable fees will be charged for drug wholesaler - Export:

| | |
|--------------|--------|
| Original fee | 590.00 |
| Renewal fee | 590.00 |
| Penalty | 295.00 |

(12) The following nonrefundable fees will be charged for drug wholesaler - Export nonprofit humanitarian organization.

| | |
|--------------|-------|
| Original fee | 25.00 |
| Renewal fee | 25.00 |
| Penalty | 25.00 |

(13) The following nonrefundable fees will be charged for pharmacy technician:

| Title of fee | Fee |
|----------------------------|---------------------------|
| Original fee | ((50.00)) <u>60.00</u> |
| Renewal fee | ((40.00)) <u>50.00</u> |
| Penalty fee | ((40.00)) <u>50.00</u> |
| Expired license reissuance | ((40.00)) <u>50.00</u> |

(14) The following nonrefundable fees will be charged for pharmacy intern:

| | |
|---------------------------|---------------------------|
| Original registration fee | ((20.00)) <u>30.00</u> |
| Renewal registration fee | ((20.00)) <u>30.00</u> |

(15) The following nonrefundable fees will be charged for Controlled Substances Act (CSA):

| | |
|--|--------|
| Registrations | |
| Dispensing registration fee (i.e. pharmacies and health care entities) | 80.00 |
| Dispensing renewal fee (i.e. pharmacies and health care entities) | 65.00 |
| Distributors registration fee (i.e. wholesalers) | 115.00 |
| Distributors renewal fee (i.e. wholesalers) | 115.00 |
| Manufacturers registration fee | 115.00 |
| Manufacturers renewal fee | 115.00 |
| Sodium pentobarbital for animal euthanization registration fee | 40.00 |
| Sodium pentobarbital for animal euthanization renewal fee | 40.00 |
| Other CSA registrations | 40.00 |

(16) The following nonrefundable fees will be charged for legend drug sample - Distributor:

| | |
|-------------------|-----------------------------|
| Registration fees | |
| Original fee | 365.00 |
| Renewal fee | 265.00 |
| Penalty fee | ((132.50)) <u>135.00</u> |

(17) The following nonrefundable fees will be charged for poison manufacturer/seller - License fees:

| | |
|--------------|-------|
| Original fee | 40.00 |
| Renewal fee | 40.00 |

(18) The following nonrefundable fees will be charged for facility inspection fee:

| | |
|--|--------|
| | 200.00 |
|--|--------|

(19) The following nonrefundable fees will be charged for precursor control permit:

| Title of fee | Fee |
|--------------|-------|
| Original fee | 65.00 |
| Renewal fee | 65.00 |

(20) The following nonrefundable fees will be charged for license reissue:

| | |
|-------------|--------------------------------------|
| Reissue fee | ((15.00)) <u>30.00</u> |
|-------------|--------------------------------------|

(21) The following nonrefundable fees will be charged for health care entity:

| | |
|--------------|--|
| Original fee | 365.00 |
| Renewal | 265.00 |
| Penalty | ((132.50)) <u>135.00</u> |

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-924-990 Psychology fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|---|---|
| Application | \$(260.00)) <u>275.00</u> |
| Renewal | ((285.00)) <u>300.00</u> |
| Renewal retired active | ((100.00)) <u>105.00</u> |
| Late renewal penalty | ((142.50)) <u>155.00</u> |
| Expired license reissuance | ((142.50)) <u>155.00</u> |
| Duplicate license | ((25.00)) <u>30.00</u> |
| Certification of license | ((25.00)) <u>30.00</u> |
| Amendment of certificate of qualification | ((30.00)) <u>35.00</u> |
| UW ((library)) on-line access fee ((HEAL-WA)) | 25.00 |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-933-590 Humane society and animal care and control agency (entity) fees and renewal cycle. (1) Registrations must be renewed every year on August 1 as provided in chapter 246-12 WAC, Part 3. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The nonrefundable fees are:

| Title of Fee | Fee |
|---------------------------------|---|
| Entity registration | \$(100.00)) <u>120.00</u> |
| Entity renewal | ((75.00)) <u>100.00</u> |
| Late renewal penalty | ((50.00)) <u>80.00</u> |
| Expired registration reissuance | ((50.00)) <u>80.00</u> |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-933-990 Veterinarian fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|------------------------------------|---|
| State examination (initial/retake) | \$(125.00)) <u>210.00</u> |
| Initial state license | ((115.00)) <u>160.00</u> |
| Specialty licensure | ((115.00)) <u>155.00</u> |
| Impaired veterinarian assessment | 10.00 |
| Temporary permit | ((200.00)) <u>235.00</u> |
| State or specialty license renewal | ((120.00)) <u>175.00</u> |

| Title of Fee | Fee |
|--|---|
| Retired active license and renewal | ((55.00) <u>85.00</u>) |
| Late renewal penalty (state and specialty license) | ((60.00) <u>95.00</u>) |
| Expired license reissuance | ((60.00) <u>90.00</u>) |
| Late renewal penalty (retired active license) | ((50.00) <u>90.00</u>) |
| Duplicate license | ((15.00) <u>30.00</u>) |
| Certification of license | ((15.00) <u>30.00</u>) |

AMENDATORY SECTION (Amending WSR 08-10-095, filed 5/7/08, effective 6/7/08)

WAC 246-935-990 Veterinary technician fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(2) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|------------------------------------|---|
| State examination (initial/retake) | \$((100.00) <u>160.00</u>) |
| Initial license | ((75.00) <u>110.00</u>) |
| Renewal | ((65.00) <u>75.00</u>) |
| Late renewal penalty | ((50.00) <u>80.00</u>) |
| Expired license reissuance | ((50.00) <u>80.00</u>) |
| Duplicate license | ((15.00) <u>30.00</u>) |
| Certification of license | ((15.00) <u>30.00</u>) |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-937-990 Veterinary medication clerk fees and renewal cycle. (1) Registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ((The secretary may require payment of renewal fees less than those established in this section if the

current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(2) The following nonrefundable fees will be charged:

| Title of Fee | Fee |
|---------------------------------|---|
| Initial registration | \$((30.00) <u>65.00</u>) |
| Renewal | ((30.00) <u>55.00</u>) |
| Late renewal penalty | ((30.00) <u>55.00</u>) |
| Expired registration reissuance | ((30.00) <u>60.00</u>) |
| Duplicate registration | ((15.00) <u>30.00</u>) |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-939-990 Surgical technologists—Fees and renewal cycle. (1) Registration must be renewed every year on registrant's birthday as provided in chapter 246-12 WAC, Part 2. ((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(2) The following nonrefundable fees will be charged for registration:

| Title of Fee | Fee |
|--|---|
| Application for registration | \$((50.00) <u>70.00</u>) |
| Renewal of registration | ((125.00) <u>65.00</u>) |
| Registration late fee | ((62.50) <u>60.00</u>) |
| Duplicate registration | ((10.00) <u>30.00</u>) |
| Expired registration reissuance | ((62.50) <u>40.00</u>) |
| Certification of registration ((issuance)) | ((25.00) <u>30.00</u>) |

WSR 11-20-107
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 5, 2011, 10:16 a.m., effective November 5, 2011]

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

Purpose: Chapter 246-102 WAC, Cancer registry, the rule updates and clarifies existing rules to meet the expanded and revised scope and requirements of cancer surveillance and registration activities according to the Centers for Disease Control and Prevention's National Program of Cancer Registries. The rule also requires the reporting of a patient's usually [usual] occupation or the primary occupation of the patient before retirement.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-102-050; and amending WAC 246-102-001, 246-102-010, 246-102-020, 246-102-030, 246-102-040, 246-102-060, and 246-102-070.

Statutory Authority for Adoption: RCW 70.54.240 through 70.54.270.

Adopted under notice filed as WSR 11-15-022 on July 8, 2011.

A final cost-benefit analysis is available by contacting Barb Weatherby, P.O. Box 47855, Tumwater, WA 98504-7855, phone (360) 236-3682, fax (360) 586-2714, e-mail Barbara.Weatherby@DOH.WA.GOV.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: August 29, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-001 Purpose. The purpose of ~~((cancer case reporting))~~ the Washington state cancer registry is to monitor the incidence of cancer in the state and report applicable limited data according to federal requirements. Information collected through the cancer registry system is used by ~~((medical,))~~ research and public health professionals to understand, control and reduce occurrences of cancer in residents of Washington. This chapter establishes the criteria ~~((and procedures))~~ for identifying and reporting cancer cases ~~((and))~~. It also defines the standards for access and release of cancer case information.

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-010 Definitions. ~~((For the purposes of RCW 70.54.230, 70.54.240, 70.54.250, 70.54.260, 70.54.270, and this chapter, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:~~

(1) "Cancer case" means:

(a) Any malignant neoplasm with the exception of basal and squamous cell carcinoma of the skin;

(b) All brain tumors;

(c) Basal and squamous cell carcinoma of the external genital organ sites (vulva, labia, clitoris, prepuce, penis, scrotum);

(d) Cancer in situ, except carcinoma in situ of the uterine cervix; or

(e) Other diagnoses necessary to meet the reporting requirements of the Center for Disease Control's National Program of Cancer Registries, the National Cancer Institute's Surveillance Epidemiology and End Results Program, the Commission on Cancer, and the North American Association of Central Cancer Registries (a copy is available for review at the department).

(2) "Cancer diagnosis or treatment facilities" means hospitals, surgical centers, outpatient radiation therapy centers, doctors' offices, independent clinical laboratories and any other facilities where cancer cases are diagnosed or treated.

(3) "Confidential information" means any information which could lead to the identification of cancer patients, cancer diagnosis or treatment facilities, independent clinical laboratories, or attending health care providers.

(4) "Contractors" means agencies designated by contract with the department of health to perform activities related to identification, collection, and processing of cancer data.

(5) "Department" means the Washington state department of health.

(6) "Designees" means hospital based cancer registries and other persons or entities designated by the department to perform data collection activities.

(7) "Hospital based cancer registry" means a cancer registry which is maintained by a hospital or other health care facility.

(8) "In situ" means tumors described as "in situ" by the pathologist reading the diagnostic report(s).

(9) "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.

(10) "Patient" means a case, suspected case or contact.

(11) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis and treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(12) "Reportable cancer case" means any cancer case diagnosed in a Washington state resident after the effective date of these rules.

(13) "Resident" means an individual residing in Washington state at the time of cancer diagnosis.

(14) "Stage of disease" means a cancer classification system encompassing attributes of a tumor as determined and described by:

(a) *Summary Staging Guide, Surveillance Epidemiology and End Results (SEER), Program, April 1977*; except when superseded by more up-to-date measures (a copy is available for review at the department); and

(b) *Manual for Staging of Cancer, 5th Edition, American Joint Committee on Cancer, (AJCC), 1998*, except when superseded by more up-to-date measures (a copy is available for review at the department).

(15) "State cancer registry" means the statewide cancer data base maintained by the department of health.

(16) "State cancer registry contract" means the legal agreement by which contractors are authorized to obtain information on reportable cancer cases. It also means the document specifying the contractors' obligations to the state cancer registry with respect to how and when information is collected, processed, and provided and how quality assurance standards are met.) The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Cancer case" means:

(a) Any malignant or cancerous neoplasm except basal and squamous cell carcinoma of the skin;

(b) Carcinoma of the external genital organ sites, including those with histology identified as basal or squamous cell type. External genital organ sites include the vulva, labia, clitoris, prepuce, penis and scrotum;

(c) Neoplasms noted as carcinoma in situ or noninvasive carcinomas, except carcinoma in situ of the cervix uteri;

(d) All benign, uncertain, borderline or malignant solid intracranial and central nervous system tumors, including the meninges and intracranial endocrine structures;

(e) All hematopoietic and lymphoid neoplasms including certain potentially malignant hematopoietic conditions;

(f) Other diagnoses that meet the reporting requirements of:

(i) The Center for Disease Control's National Program of Cancer Registries;

(ii) The National Cancer Institute's Surveillance Epidemiology and End Results Program;

(iii) The North American Association of Central Cancer Registries as described by the *International Classification of Disease for Oncology, Third Edition (ICD-O-3)*;

(iv) The North American Association of Central Cancer Registries as described by the *WHO Classification of Tumours of Haematopoietic and Lymphoid Tissues, Fourth Edition, Volume 2* published by the World Health Organization.

(2) "Case report" means a complete report, including all items in WAC 246-102-040(3), documenting a cancer case.

(3) "Certified tumor registrar (CTR)" means an individual certified by the National Cancer Registrars Association.

(4) "Department" means the Washington state department of health.

(5) "First course treatment" means all methods of treatment documented in the treatment plan after the original

diagnosis and administered to the patient before disease progression or recurrence.

(6) "Health care facility" means any facility or institution which diagnoses, evaluates, provides treatment to patients or provides biomarker or other required prognostic or predictive information to physicians on patients with reportable or potentially reportable cancer cases. Health care facilities include:

(a) Hospitals providing either inpatient or outpatient services;

(b) Free-standing surgical, radiation therapy, imaging, and oncology centers;

(c) Health maintenance organizations;

(d) Multispecialty clinics;

(e) Hospices;

(f) Ambulatory surgical facilities; and

(g) Other outpatient facilities.

(7) "Health care provider" means a person licensed, certified, or registered under RCW 18.130.040 and who diagnoses, evaluates, or provides treatment to patients with reportable or potentially reportable cancer cases.

(8) "Laboratory" means pathology, cytology, biomarker, molecular, genetic and other clinical or reference laboratories, including both hospital laboratories and free-standing laboratories.

(9) "Potentially reportable cancer case" means the reporting of a cancer case based on ambiguous terminology.

(10) "Reporting entity" means any health care facility, laboratory, treatment center, or health care provider.

(11) "Stage of disease" means how far the cancer has spread from the organ or site of origin at the time of diagnosis and treatment planning.

(12) "State cancer registry" means the Washington state cancer registry.

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-020 Who must report. ((By statute (RCW 70.54.240), the responsibility for identifying and reporting cases of cancer rests with health care facilities, independent clinical laboratories, and other principal health care providers. The department may, at its discretion, delegate some or all of these responsibilities to contractors or other designees. A list of the contractors and designees responsible for identifying and reporting cases of cancer diagnosed at specific sites in Washington is available for review at the department.)) (1) Reporting entities that diagnose, or provide first course treatment to a patient with a cancer case or potentially reportable cancer case shall report the cancer case to the state cancer registry.

(2) If a health care provider refers patients to a health care facility with cancer registry staffing for diagnostic or first course treatment services, then the health care facility is responsible for reporting the case to the state cancer registry.

(3) For purposes of this section "health care facility with cancer registry staffing" means those health care facilities with in-house cancer registries or contracted registry staff services.

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-030 Cancer case identification. ~~((+) Contractors or designees shall identify reportable cancer cases diagnosed and treated at cancer diagnosis and treatment facilities:~~

~~(2) Cancer diagnosis or treatment facilities shall:~~

~~(a) Organize case finding documents by procedure or service date to permit identification of cancer cases; and~~

~~(b) Submit or make available, case finding documents including the following if maintained:~~

~~(i) Disease and operation indices for cancer cases;~~

~~(ii) Pathology and cytology reports;~~

~~(iii) New patient radiation logs;~~

~~(iv) New patient chemotherapy logs; and~~

~~(v) Other alternative case finding documents that are necessary to identify or verify reportable cancer cases;~~

~~(c) Cancer diagnosis or treatment facilities shall submit case finding documents by paper form, computer disk, or electronic file or make batched hard copy documents available for on-site review, within forty-five days of the date of service.~~

~~(3) On request, principal health care providers shall identify to contractors, designees, or the department reportable cancer cases diagnosed at facilities other than hospitals, surgical centers, and outpatient radiation therapy centers (as specified under WAC 246-102-030 and 246-102-040) unless the patient was hospitalized for additional cancer diagnosis or treatment services within one month of diagnosis:)) The state cancer registry shall:~~

(1) Publish a reportable list annually.

(2) Publish a recommended case finding list annually.

(3) Publish a list of required data items annually.

(4) Publish recommended reporting guidelines as needed.

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-040 Data collection and submission requirements. (1) ~~((Contractors or designees shall complete cancer abstracts for patients identified through cancer diagnosis and treatment facilities:~~

~~(2) Cancer diagnosis or treatment facilities shall provide contractors or their designees with access to pathology and cytology reports and all medical records pertaining to identified cancer cases:~~

~~(3) On request by the contractor, designee or the department, principal health care providers or their staff shall be responsible for completing cancer abstracts for patients diagnosed at facilities other than hospitals, surgical centers, and outpatient radiation therapy centers, unless the patient was hospitalized for additional cancer diagnosis or treatment services within one month of diagnosis.~~

~~(4) The following information items shall be included in cancer abstracts, providing)) Reporting entities shall prepare and submit case reports in a format provided by the state cancer registry.~~

(2) Reporting entities shall submit completed case reports to the state cancer registry within six months of the

date of diagnosis or date patient is first seen for first course treatment, if the diagnosis was made at another health care facility or by another health care provider.

(3) Case reports shall include the following information ((is available)) from the patient's medical records:

(a) Patient information:

(i) Name (last, first, middle);

(ii) Address at time of diagnosis;

(iii) Sex;

(iv) Race(s);

(v) Spanish/hispanic origin;

(vi) Birthdate;

(vii) Age at time of diagnosis;

(viii) Social Security number;

(ix) State or country of birth;

(x) Usual occupation, or if retired, primary occupation before retirement;

(xi) Primary payor;

(b) Diagnostic information:

(i) Date ((first seen for this cancer)) of patient's first contact with the reporting entity for the diagnosis or treatment of the cancer;

(ii) ((Primary site or sites;

(iii) Histologic type or types, behavior and grade;

(iv) Date of each diagnosis;

(v) Method or methods of diagnostic confirmation;

(vi) Stage of disease at diagnosis using:

(A) Summary stage; and

(B) AJCC system if maintained by the cancer diagnostic or treatment facility;

(vii) Sequence;

(viii) Laterality;

(c) First course of treatment information:

(i) Date of initial treatment;

(ii) All treatment modalities given as part of first course of therapy;

(d) Other information:

(i) Name and address of cancer diagnosis or treatment facility providing information;

(ii) Medical record number;

(iii) Name and address of principal health care provider; and

(iv) Other items necessary to meet the reporting requirements of the Center for Disease Control's National Program of Cancer Registries, the National Cancer Institute's Surveillance Epidemiology and End Results Program, the Commission on Cancer, and the North American Association of Central Cancer Registries (a copy is available at the department).

(5) The department may require submission of additional information from contractors or designees as needed to assess data reliability and validity.

(6) Contractors shall prepare detailed data collection protocols for inclusion in the state cancer registry contract:))

Date diagnosis made:

(iii) Primary site of originating tumor;

(iv) Laterality (if applicable);

(v) Histology type or types, behavior and grade of tumor;

(vi) Documentation, including dates, of pertinent diagnostic or evaluation studies, and biopsies;

(vii) Written documentation that describes the stage of disease at diagnosis, including Collaborative Staging coding used;

(viii) Sequence number;

(c) First course of treatment information;

(i) Date initial treatment began or the date the decision for no treatment was made;

(ii) Description of all treatment given as part of the first course treatment including, but not limited to, surgery, radiation, chemotherapy, BRM/immunotherapy, hormone or other therapies, or a statement as to why no treatment was given;

(d) Other information;

(i) Date of last contact;

(ii) Vital status at time of last contact;

(iii) Identification of reporting entity providing information;

(A) Name and address; or

(B) National Provider Identification number; and

(iv) Other items necessary to meet the reporting requirements of the state cancer registry as provided annually.

(4) For the purpose of assuring high quality data, the state cancer registry will publish reporting guidelines for assistance in completing the requirements in subsections (2) and (3) of this section, which will be available on the registry's web site.

(5) All laboratories shall provide:

(a) Report files within ten days of the close of each month or on a schedule determined by the volume of reports acquired daily and approved by the state cancer registry;

(b) Updated information made to reports resulting in addendums and amendments; and

(c) Patient demographic information.

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-060 Data quality assurance. ~~((1) Contractors or designees shall:~~

~~(a) Assess the completeness and accuracy of case identification and data collection through computerized edit programs and on-site audits, or make available information and documentation for this purpose; and~~

~~(b) Maintain a system for retrieval of completed cancer abstracts for a period up to ten years.~~

~~(2) Cancer diagnosis or treatment facilities shall:~~

~~(a) Make available to the contractor, designee or the department, all case finding source documents and medical records for data quality assurance activities.~~

~~(b) Maintain a system for retrieval of case finding source documents and medical records for a period up to ten years.~~

~~(3) The department may require contractors or designees to make available all findings from data quality assurance activities for review and verification.)~~ (1) To assure accurate monitoring of the incidence of cancer in Washington, the state cancer registry shall review the overall quality of all cases received using national guidelines.

(2) The state cancer registry shall follow up with reporting entities for additional case information as needed to ensure the completeness and quality of a case report.

(3) The state cancer registry shall provide education and training related to identifying and reporting cases. The state cancer registry shall:

(a) Offer education and training opportunities to certified tumor registrars on staff at health care facilities.

(b) Offer education and training opportunities to individuals not certified as a certified tumor registrar, but who report cancer cases to the state.

(4) The state cancer registry shall provide technical assistance to reporting entities.

(5) The state cancer registry shall perform audits of reporting entities to ensure accurate and complete reporting.

(6) The state cancer registry will provide thirty days notice of an audit.

(7) The state cancer registry shall request the following documents, as appropriate from the reporting entity, as part of the audit process:

(a) Disease and operations indices files;

(b) Pathology, cytology, and autopsy reports or files;

(c) Report files providing results of specialized testing, such as biomarker results or results of any other tests providing prognostic or predictive information;

(d) Report files providing imaging results;

(e) Radiation therapy new patient or summary treatment files;

(f) Medical oncology new patient or summary treatment files;

(g) Office visit logs; and

(h) Other alternative reports or electronic files necessary to identify and provide information on reportable or potentially reportable cancer cases.

AMENDATORY SECTION (Amending WSR 01-04-086, filed 2/7/01, effective 3/10/01)

WAC 246-102-070 Access and release of information. (1) Information collected by the state cancer registry ((information)) shall be used only for statistical, scientific, medical research and public health purposes. ((Contractors and designees must comply with chapter 70.02 RCW regarding the disclosure of patient health care information.))

(2) The department may release ((confidential)) state cancer registry information for research purposes:

((Research purposes)) (a) After the research project has been reviewed and approved by ((an institutional review board and a confidentiality agreement is negotiated (a copy of the institutional review board procedures and application are available from the department)).

(3) The department may release confidential registry information for projects to assess threats to public health or improve public health practice after the project has been reviewed and approved by the department and a data-sharing agreement is negotiated (a copy of the procedures for data-sharing agreements is available from the department).

(4) Cancer diagnosis or treatment facilities may require contractors or designees to sign an agreement of confidentiality regarding access and release of cancer data and prepare, administer, and maintain confidentiality oaths as needed.

(5) Cancer diagnosis or treatment facilities shall adhere to recommendations in RCW 70.54.260 regarding content of

confidentiality agreement if confidentiality agreements are used:

~~(6) Cancer diagnosis and treatment centers shall make available to cancer patients printed information which describes the purpose of the state cancer registry, the statutory requirements which apply to health care facilities, independent clinical laboratories, and other principal health care providers to identify and report cases of cancer to the state cancer registry, and to protect the confidential information that is reported, the public health and research uses of information in the state cancer registry, the circumstances under which cancer registry information is disclosed for these purposes and the relevant RCW and WAC pertaining to the state cancer registry.)~~ the Washington state institutional review board; and

(b) After a written agreement between the department and the researcher is in place regarding state cancer registry information accessed, used or disclosed. Written agreements shall incorporate:

(i) The confidentiality requirements in RCW 42.48.020; and

(ii) The department's data security requirements.

(3) The department may release state cancer registry information for projects to assess threats to public health or improve public health practice after the project has been reviewed and approved by the department and a data-sharing agreement is in place.

(4) The state cancer registry shall publish an annual report that includes:

(a) Age-adjusted incidence rates;

(b) Age-adjusted mortality rates; and

(c) Age-adjusted incidence and mortality rates by sex, race, ethnicity, and county at diagnosis subject to confidentially requirements.

(5) The state cancer registry shall make available to health care facilities and health care providers:

(a) Information for patients and their families that describes the purpose of the state cancer registry;

(b) The statutory requirements;

(c) The intended use of case information;

(d) The circumstances under which cancer registry information is disclosed.

(6) The state cancer registry shall exchange data with states that have a data exchange agreement in place. The data provided to other states shall only include cancer cases with an address at the time of diagnosis outside the borders of Washington state.

REPEALER

The following section of the Washington Administrative Code is repealed:

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| WAC 246-102-050 | Form, frequency, and format for reporting. |
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