WSR 12-21-091
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 22, 2012, 3:16 p.m., effective November 22, 2012]

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

Purpose: DSHS aging and disability services administration is amending chapters 388-513 and 388-515 WAC in order to:

- Combine categorically needy (CN) and medically needy (MN) home and community based waiver eligibility.
- Update excess home equity standards and add formula for the increase based on federal standards for January 2011, and ongoing and updating the federal utility standard used in spousal deeming.
- Clarifying reasonable limits for qualifying medical deductions.
- Update links and references based on HB [2E2SHB] 1738 and health care authority (HCA) medicaid WACs recodified under Title 182 WAC.
- Update references of the former general assistance program to aged, blind, disabled (ABD) cash and medical care services (MCS).
- Add language to the hardship waiver WAC to include transfers between registered domestic partners or legally married same-sex couples.
- Updated references and adding clarifying language.
- Adding language regarding the treatment of entrance fees of individuals residing in continuing care retirement communities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1301, 388-513-1305, 388-513-1315, 388-513-1320, 388-513-1330, 388-513-1340, 388-513-1345, 388-513-1350, 388-513-1363, 388-513-1364, 388-513-1365, 388-513-1367, 388-513-1380, 388-513-1395, 388-515-1505, 388-515-1506, 388-515-1507, 388-515-1508, 388-515-1509, 388-515-1510, 388-515-1511, 388-515-1512, 388-515-1513, 388-515-1514, 388-515-1540, and 388-515-1550.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), section 209(1), chapter 37, Laws of 2010 (ESSB 6444).

Adopted under notice filed as WSR 12-16-023 on July 25, 2012.

Changes Other than Editing from Proposed to Adopted Version: Changed references from Title 388 WAC to Title 182 WAC based on the recodification of WACs by the HCA. Chapter 388-519 WAC references changed to chapter 182-519 WAC, changed WAC reference [from] WAC 388-478-0075 to WAC 182-505-0100 which describes the federal poverty level (FPL) standard.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 26, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.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 1, Amended 26, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-054, filed 8/27/04, effective 9/27/04)

WAC 388-513-1301 Definitions related to long-term care (LTC) services. This section defines the meaning of certain terms used in chapters 388-513 and 388-515 WAC. Within these chapters, institutional, waiver, and hospice services are referred to collectively as LTC services. Other terms related to LTC services that also apply to other programs are found in the sections in which they are used.

Additional medical definitions that are not specific to LTC services can be found in WAC 182-500-0005 through 182-500-0110 Medical definitions.

Definitions of terms used in certain rules that regulate LTC programs are as follows:

((**"Add-on hours"** means additional hours the department purchases from providers to perform medically oriented tasks for clients who require extra help because of a handicapping condition.))

"Adequate consideration" means the reasonable value of the goods or services received in exchange for transferred property approximates the reasonable value of the property transferred.

"Alternate living facility (ALF)" means one of the following community residential facilities that are contracted with the department to provide certain services:

(1) Adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care. Licensed as an adult family home under chapter 70.128 RCW.

(2) Adult residential care facility (ARC) (formerly known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as an assisted living under chapter 18.20 RCW.

(3) Adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF)((~~,a~~)) described in WAC 388-865-0465 are licensed ((~~facility~~)) facilities that provides ((~~its~~)) their residents with twenty-four hour residential care for impairments related to mental illness.

(4) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPES eligible clients are often placed in assisted

living. Licensed as an assisted living facility under chapter 18.20 RCW.

(5) Division of developmental disabilities (DDD) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on the size, a DDD group home may be licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

(6) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as an assisted living facility under chapter 18.20 RCW.

"Authorization date" means the date payment begins for long-term care services described in WAC 388-106-0045.

"CARE assessment" means the evaluation process defined in chapter 388-106 WAC used by a department designated social services worker or a case manager to determine the client's need for long-term care services.

"Clothing and personal incidentals (CPI)" means the ((~~same as personal needs allowance (PNA) which is defined later in this section~~)) cash payment issued by the department for clothing and personal items for individuals living in an ALF described in WAC 388-478-0045 or medical institution described in WAC 388-478-0040.

"Community options program entry system (COPES)" means a medicaid waiver program described in chapter 388-106 WAC that provides an aged or disabled person assessed as needing nursing facility care with the option to remain at home or in an alternate living facility (ALF).

"Community spouse (CS)" means a person who ((~~does not live in a medical institution or nursing facility, and who is legally married to an institutionalized client or to a person receiving services from home and community-based waiver programs.~~

~~**"Comprehensive assessment (CA)"** means the evaluation process used by a department designated social services worker to determine the client's need for long-term care services~~)):

(1) Does not reside in a medical institution; and

(2) Is legally married to a client who resides in a medical institution or receives services from a home and community-based (HCB) waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

"Community spouse excess shelter" means the excess shelter standard is used to calculate whether a community spouse qualifies for the community spouse maintenance allowance because of high shelter costs. The federal maximum standard that is used to calculate the amount is found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

"Community spouse income and family allocation" means:

(1) The community spouse income standard is used when there is a community spouse. It is used when determining the total allocation for the community spouse from the institutional spouse's income.

(2) The family allocation income standard is used when a dependent resides with the community spouse. This amount is deducted from an institutional spouse's payment for their cost of care to help support the dependent. The federal maximum standard that is used to calculate the amount can be found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

"Community spouse maintenance allocation" means an amount deducted from an institutional spouse's payment toward their cost of care in order for the community spouse to have enough income to pay their shelter costs. This is a combination of the community spouse income allocation and the community spouse excess shelter calculation. The federal maximum standard that is used to calculate the amount can be found at:

"Community spouse resource allocation (CSRA)" means the resource amount the community spouse is allowed. A community spouse resource evaluation is completed to determine if the standard is more than the state standard up to the federal community spouse transfer maximum standard.

"Community spouse resource evaluation" means a review of the couple owned at the start of the current period of institutional status. This review may result in a resource standard for the community spouse that is higher than the state standard.

"Community spouse transfer maximum" means the federal maximum standard that is used to determine the community spouse resource allocation (CSRA). This standard is found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

"DDD waiver" means medicaid waiver programs described in chapter 388-845 WAC that provide home and community-based services as an alternative to an intermediate care facility for the ((~~mentally retarded (ICF-MR)~~)) intellectually disabled (ICF-ID) to persons determined eligible for services from DDD. ((~~There are four waivers administered by DDD: Basic, Basic Plus, Core and Community Protection.~~))

"Dependent" means an individual who is financially dependent upon another for his well being as defined by financial responsibility regulations for the program. For the purposes of long-term care, rules allow allocation in post eligibility to a dependent. If the dependent is eighteen years or older and being claimed as a dependent for income tax purposes, a dependent allocation can be considered. This can include an adult child, a dependent parent or a dependent sibling.

"Equity" means the equity of real or personal property is the fair market value (see definition below) less any encumbrances (mortgages, liens, or judgments) on the property.

"Exception to rule (ETR)" means a waiver by the secretary's designee to a department policy for a specific client experiencing an undue hardship because of the policy. The waiver may not be contrary to law.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the ((~~local~~)) open market at the time of transfer or assignment. ((~~A transfer of assets for love and affection is not considered a transfer for FMV.~~))

"Federal benefit rate (FBR)" means the basic benefit amount the Social Security administration (SSA) pays to clients who are eligible for the supplemental security income (SSI) program.

"Home and community based services" (HCBS) means services provided in the home or a residential setting to individuals assessed by the department.

"Home and community based (HCB) waiver programs" means section 1915(c) of the social security act enables states to request a waiver of applicable federal medicaid requirements to provide enhanced community support services to those medicaid beneficiaries who would otherwise require the level of care provided in a hospital, nursing facility or intermediate care facility for the intellectually disabled (ICF-ID).

"Initial eligibility" means part one of institutional medical eligibility for long-term care services. Once resource and general eligibility is met, the gross nonexcluded income is compared to three hundred percent of the federal benefit rate (FBR) for a determination of CN or MN coverage.

"Institutional services" means services paid for by medicaid or state ((~~payment~~)) funds and provided in a ((~~nursing facility or equivalent care provided in a medical facility~~)) medical institution, through a home and community based (HCB) waiver or program of all-inclusive care for the elderly (PACE).

"Institutional status" means what is described in WAC 388-513-1320.

"Institutionalized client" means a client who has attained institutional status as described in WAC 388-513-1320.

"Institutionalized spouse" means ((~~a client who has attained institutional status as described in WAC 388-513-1320 and is legally married to a person who is not an institutionalized client~~)) legally married person who has attained institutional status as described in chapter 388-513 WAC, and receives services in a medical institution or from a home and community based waiver program described in chapter 388-513 and 388-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

"Legally married" means persons legally married to each other under provision of Washington state law. Washington recognizes other states' legal and common-law marriages. Persons are considered married if they are not divorced, even when they are physically or legally separated.

"Likely to reside" means a determination by the department that a client is reasonably expected to remain in a medical ((~~facility~~)) institution for thirty consecutive days. Once made, the determination stands, even if the client does not actually remain in the facility for that length of time.

"Look-back period" means the number of months prior to the month of application for LTC services that the department will consider for transfer of assets.

"Maintenance needs amount" means a monthly income amount a client keeps as a personal needs allowance or that is allocated to a spouse or dependent family member who lives in the client's home. (See community spouse maintenance allocation and community spouse income and family allocation).

((~~**"Medically intensive children (MIC)"** program means a medicaid waiver program that enables medically fragile children under age eighteen to live in the community. The program allows them to obtain medical and support services necessary for them to remain at home or in a home setting instead of in a hospital. Eligibility is included in the OBRA program described in WAC 388-515-1510~~)) **"Medicaid personal care (MPC)"** means a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility. Financial eligibility is based on a client receiving a noninstitutional categorically needy (CN) medical program.

"Noninstitutional medical assistance" means any medical benefits ((~~provided by medicaid or state-funded programs that do not include LTC services~~)) or programs not authorized under chapter 388-513 or 388-515 WAC. The exception is WAC 388-513-1305 noninstitutional SSI related clients living in an ALF.

((~~**"Nursing facility turnaround document (TAD)"** means the billing document nursing facilities use to request payment for institutionalized clients.~~

~~**"Outward bound residential alternative (OBRA)"** means a medicaid waiver program that provides a person approved for services from DDD with the option to remain at home or in an alternate living facility.~~))

"Participation" means the amount a client is responsible to pay each month toward the total cost of care they receive each month. It is the amount remaining after subtracting allowable deductions and allocations from available monthly income. Individuals receiving services in an ALF pay room and board in addition to calculated participation. Participation is the result of the post-eligibility process used in institutional and HCB waiver eligibility.

"Penalty period" means a period of time for which a client is not eligible to receive LTC services due to asset transfers.

"Personal needs allowance (PNA)" means a standard allowance for clothing and other personal needs for long-term care clients who live in a medical institution or alternate living facility, or at home. ((~~This allowance is sometimes referred to as "CPI."~~))

((~~**"Prouty benefits"** means special "age seventy-two" Social Security benefits available to persons born before 1896 who are not otherwise eligible for Social Security.~~))

"Short stay" means a person who has entered a medical ((~~facility~~)) institution but is not likely to remain institutionalized for thirty consecutive days.

"Special income level (SIL)" means the monthly income standard for the categorically needy (CN) program that is three hundred percent of the SSI federal benefit rate (FBR).

"Spousal impoverishment" means financial provisions to protect income and assets of the noninstitutional (community spouse) through income and resource allowances. The spousal allocation process is used to discourage the impoverishment of a spouse due to the need for LTC services by their husband or wife. That law and those that have extended and/or amended it are referred to as spousal impoverishment legislation. (Section 1924 of the Social Security Act).

"State spousal resource standard" means minimum resource standard allowed for a community spouse. (See community spouse resource transfer maximum).

"Swing bed" means a bed in a ((~~medical facility~~)) critical access hospital that is contracted to be used as ((~~both~~)) either a hospital ((~~and~~)) or a nursing facility bed based on the need of the individual.

"Third party resource (TPR)" means a resource where the purpose of the payment is for payment of assistance of daily living or medical services or personal care. Third party resources are described in WAC 182-501-0200. The department is considered the payer of last resort as described in WAC 182-502-0100.

"Transfer of a resource or asset" means ((~~any act or failure to act, by a person or a nonapplying joint tenant, whereby title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person~~)) changing ownership or title of an asset such as income, real property, or personal property by one of the following:

(1) An intentional act that changes ownership or title; or

(2) A failure to act that results in a change of ownership or title.

"Transfer date for real property or interest in real property" means:

(1) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or

(2) The date of transfer for real property is the day the signed deed is delivered to the grantee.

"Transfer month" means the calendar month in which resources were legally transferred.

"Uncompensated value" means the fair market value (FMV) of an asset at the time of transfer minus the value of compensation the person receives in exchange for the asset.

"Undue hardship" means the person is not able to meet shelter, food, clothing, or health needs. Clients who are denied or terminated from LTC services due to a transfer of asset penalty or having excess home equity may apply for an undue hardship waiver based on criteria described in WAC 388-513-1367.

"Value of compensation received" means the consideration the purchaser pays or agrees to pay. Compensation includes:

(1) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and

(2) The payment or assumption of a legal debt the seller owes in exchange for the asset.

"Veterans benefits" means different types of benefits paid by the federal Department of Veterans Affairs (VA). Some may include additional allowances for:

(1) Aid and attendance for an individual needing regular help from another person with activities of daily living;

(2) "Housebound" for an individual who, when without assistance from another person, is confined to the home;

(3) Improved pension, the newest type of VA disability pension, available to veterans and their survivors whose income from other sources (including service connected disability) is below the improved pension amount; ((~~or~~))

(4) Unusual medical expenses (UME), determined by the VA based on the amount of unreimbursed medical expenses reported by the person who receives a needs-based benefit. The VA can use UME to reduce countable income to allow the person to receive a higher monthly VA payment, a one-time adjustment payment, or both;

(5) Dependent allowance veteran's payments made to, or on behalf of, spouses of veterans or children regardless of their ages or marital status. Any portion of a veteran's payment that is designated as the dependent's income is countable income to the dependent; or

(6) Special monthly compensation (SMC). Extra benefit paid to a veteran in addition to the regular disability compensation to a veteran who, as a result of military service, incurred the loss or loss of use of specific organs or extremities.

"Waiver programs/services" means programs for which the federal government authorizes exceptions to federal medicaid rules. Such programs provide to an eligible client a variety of services not normally covered under medicaid. In Washington State, home and community based (HCB) waiver programs are ((~~DDD waivers, COPES, MIC, and OBRA~~)) authorized by the division of developmental disabilities (DDD), or home and community services (HCS).

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1305 Determining eligibility for noninstitutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC 388-478-0045 for the personal needs allowance (PNA) amount that applies in this rule.

(1) The eligibility criteria for noninstitutional medical assistance in an ALF follows SSI-related medical rule described in WAC 182-512-0050 through 182-512-0960 with the exception of the higher medical standard based on the daily rate described in subsection (3).

(2) Alternate living facilities (AFH) include the following:

(a) An adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care. Licensed as an adult family home under chapter 70.128 RCW and chapter 388-76 WAC;

(b) An adult residential care facility (ARC) (formally known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as an assisted living facility under chapter 18.20 RCW and chapter 388-78A WAC;

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF) described in WAC 388-865-0465. These are licensed facilities that provide its residents with twenty-four hour residential care for impairments related to mental illness;

(d) ((~~An adult residential treatment facility (ARTF)~~)) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities.

COPES eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapter 18.20 RCW and chapter 388-78A WAC;

(e) ((~~An assisted living facility (AL)~~)) Division of developmental disabilities (DDD) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on size of a DDD group home may be licensed as an adult family home under chapter 70.128 RCW or a boarding home under chapter 18.20 RCW. Group home means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider; and

(f) ((~~A division of developmental disabilities (DDD) group home (GH); and~~

~~(g) An enhanced adult residential care facility (EARC).~~

~~(2)~~)) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as an assisted living facility under chapter 18.20 RCW.

(3) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) program ((~~that cannot exceed the special income level (SIL) equals the following amounts. For a client who lives in:~~

~~(a) An ARC, an ARRC, an ARTF, an AL, a DDD GH, or an EARC, the department-contracted rate based on a thirty-one day month plus the PNA; or~~

~~(b) An AFH, the department-contracted rate based on a thirty-one day month plus the PNA plus the cost of any add-on hours authorized by the department.~~

~~(3)~~)) has two steps:

(a) The gross nonexcluded monthly income cannot exceed the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(b) The countable income cannot be greater than the department contracted daily rate times thirty-one days, plus the thirty-eight dollars and eighty-four cents PNA/CPI described in WAC 388-478-0045.

(4) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility daily rate ((~~based on a thirty-one-day month~~)) times thirty one days, plus the thirty-eight dollars and eight-four cents PNA/CPI described in WAC 388-478-0045. Follow MN rules described in chapter 182-519 WAC.

(((~~(4) The monthly income standard for noninstitutional medical assistance under the general assistance (GA) program equals the GA grant standard described in WAC 388-478-0045.~~)))

(5) The department ((~~determines a client's nonexcluded resources for noninstitutional medical assistance under the:~~

~~(a) General assistance (GA) and temporary assistance for needy families (TANF) programs as described in chapter 388-470 WAC; and~~

~~(b) SSI-related medical program as described in chapter 388-475 WAC~~)) approves CN noninstitutional medical assistance for a period of up to twelve months for a client who is SSI-related as described in WAC 182-512-0050, if:

(a) The client's nonexcluded resources do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client's nonexcluded income does not exceed the CN standard described in subsection (3) of this section. SSI related program as described in chapter 182-512 WAC.

(6) The department ((~~determines a client's nonexcluded income for noninstitutional medical assistance as described in:~~

~~(a) Chapter 388-450 WAC for GA and TANF programs; and~~

~~(b) Chapter 388-475 WAC and WAC 388-506-0620 for SSI-related medical programs~~)) approves MN noninstitutional medical assistance for a period of months described in chapter 182-504 WAC for an SSI-related client, if:

(a) The client's nonexcluded resources do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client satisfies any spenddown liability as described in chapter 182-519 WAC.

(7) The department ((~~approves CN noninstitutional medical assistance for a period of up to twelve months for a client who receives Supplemental Security Income (SSI) or who is SSI-related as described in WAC 388-475-0050, if:~~

~~(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and~~

~~(b) The client's nonexcluded income described in subsection (6) does not exceed the CN standard described in subsection (2)~~)) determines eligibility for a cash grant for individuals residing in an alternate living facility using the following program rules:

(a) WAC 388-400-0005 temporary assistance for needy families (TANF);

(b) WAC 388-400-0060 aged, blind, disabled (ABD) cash benefit;

(c) WAC 388-400-0030 refugee assistance.

(8) The ((~~department approves MN noninstitutional medical assistance for a period of months described in chapter 388-416 WAC for an SSI-related client, if:~~

~~(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and~~

~~(b) The client satisfies any spenddown liability as described in chapter 388-519 WAC~~)) client described in subsection (7) residing in an adult family home (AFH) receives a grant based on a payment standard described in WAC 388-478-0033 due to an obligation to pay shelter costs to the adult family home. The client keeps a CPI in the amount of thirty-eight dollars and eighty-four cents described in WAC 388-478-0045 and pays the remainder of the grant to the adult family home as room and board.

(9) The ((~~department approves GA and TANF noninstitutional medical assistance for a period of months described in chapter 388-416 WAC~~)) client described in subsection (7) residing in an ALF described in subsections (2)(b), (c), (d), (e), (f) or (g) (all nonadult family home residential settings) keeps the thirty-eight dollars and eighty-four cents CPI amount based on WAC 388-478-0045.

(10) The client described in ((~~subsections (7) and (9) keeps the PNA amount and pays remaining income to the facility for board and room~~)) (3) and receiving medicaid personal care (MPC) from the department keeps sixty-two dollars and seventy-nine cents as a PNA and pays the remainder of their income to the ALF for room and board and personal care.

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 10-01-158, filed 12/22/09, effective 1/22/10)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the ((~~general assistance (GA) program in subsection (12)~~)) aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded ((~~nursing facility~~)) long-term care services program described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC ((~~388-503-0505~~)) 182-503-0505 (2) and (3)(a) through (((~~f~~))) (g);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for home and community services (HCS) waiver and nursing facility coverage; or

(d) Meet criteria for division of developmental disabilities (DDD) assessment under chapter 388-828 WAC for DDD waiver or institutional services;

(e) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365 ((~~or 388-513-1366~~));

(((~~e~~))) (f) Not have equity interest in their primary residence greater than ((~~five hundred thousand dollars in their primary residence as~~)) the home equity standard described in WAC 388-513-1350; and

(((~~f~~))) (g) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving Supplemental Security Income (SSI).

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC ((~~388-475-0050~~)) 182-512-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving ((~~the general assistance expedited medicaid disability (GA-X) or general assistance aged (GA-A) or general assistance disabled (GA-D) described in WAC 388-505-0110(6)~~)) aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC ((~~388-505-0210~~)) 182-505-0210; or CN family medical described in WAC ((~~388-505-0220~~)) 182-505-0240; or family and children's institutional medical described in WAC ((~~388-505-0230~~)) 182-514-0230 through ((~~388-505-0260~~)) 182-514-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services for noncitizen children require prior approval ((~~for~~)) by aging and disability services administration (ADSA) under the state funded nursing facility program described in WAC ((~~388-438-0125 for noncitizen children~~)) 182-507-0125; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers((~~; or~~

~~(c) WAC 388-515-1540 for the medically needy residential waiver (MNRW); or~~

~~(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW)~~)).

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter ((~~388-551~~)) 182-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (((~~CN-P~~))) (CN) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI related clients with income over the effective one-person MNIL and gross income at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC ((~~388-505-0210, 388-505-0255, or 388-505-0260~~)) 182-514-0230, 182-514-0255, or 182-514-0260; or

(b) Related to the SSI program as described in WAC ((~~388-475-0050~~)) 182-512-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC ((~~388-475-0150~~)) 182-512-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365 ((~~or 388-513-1366~~)).

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395((~~(6)~~)) for:

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for ((~~the~~)) state funded ((~~nursing facility program described in WAC 388-438-0110 and 388-438-0125. Nursing facility services under the state funded nursing facility program must be pre-approved by aging and disability services administration (ADSA).~~

~~(12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (9) through (11).~~

~~(13)~~)) programs under the following rules:

(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.

(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.

(c) A noncitizen client who is not eligible under subsections (11)(a) or (b) and needs long-term care services may be eligible under WAC 182-507-0110 and WAC 182-507-0125. This program must be pre-approved by aging and disability services administration (ADSA).

(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is under the age of twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(((~~(14)~~))) (13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(((~~(15)~~))) (14) If an individual under age twenty one is not eligible for medicaid under SSI related in WAC ((~~388-475-0050~~)) 182-512-0050 or ((~~general assistance (GA) described in WAC 388-448-0001 and 388-505-0110(6)~~)) ABD cash assistance described in WAC 388-400-0060 or MCS described in 182-508-0005, consider eligibility under WAC ((~~388-505-0255~~)) 182-514-0255 or ((~~388-505-0260~~)) 182-514-0260.

(((~~(16)~~))) (15) Noncitizen ((~~individuals~~)) clients under age nineteen can be considered for the apple health for kids program described in WAC ((~~388-505-0210~~)) 182-505-0210 if they are admitted to a medical institution for less than thirty days. Once ((~~an individual~~)) a client resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC ((~~388-505-0260~~)) 182-514-0260 and must be preapproved for coverage by ADSA as described in WAC ((~~388-438-0125~~)) 182-507-0125.

(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 182-507-0125. These clients must be pre-approved by ADSA.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514; or

(d) ((~~For clients receiving HCS MN waiver services see WAC 388-515-1540 or 388-515-1550; or~~

~~(e)~~)) For TANF related clients residing in a medical institution see WAC ((~~388-505-0265~~)) 182-514-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive ((~~CN-P~~)) CN medicaid. These groups are described in WAC ((~~388-475-0880~~)) 182-512-0880.

AMENDATORY SECTION (Amending WSR 09-07-036, filed 3/10/09, effective 4/10/09)

WAC 388-513-1320 Determining institutional status for long-term care (LTC) services. (1) Institutional status is an eligibility requirement for long-term care services (LTC) and institutional medical programs. To attain institutional status, you must:

(a) Be approved for and receiving home and community based waiver services or hospice services; or

(b) Reside or ((~~be~~)) based on a department assessment is likely to reside in a medical institution, institution for ((~~medical~~)) mental diseases (IMD) or inpatient psychiatric facility for a continuous period of:

(i) Thirty days if you are an adult eighteen and older;

(ii) Thirty days if you are a child seventeen years of age or younger admitted to a medical institution; or

(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.

(2) Once the department has determined that you meet institutional status, your status is not affected by:

(a) Transfers between medical facilities; or

(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.

(3) If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status.

AMENDATORY SECTION (Amending WSR 07-14-087, filed 6/29/07, effective 7/30/07)

WAC 388-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice). This section describes income the department considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

(1) Refer to WAC 388-513-1330 for rules related to available income for legally married couples.

(2) The department must apply the following rules when determining income eligibility for SSI-related LTC services:

(a) WAC ((~~388-475-0600~~)) 182-512-0600 Definition of income;

(b) WAC ((~~388-475-0650~~)) 182-512-0650 Available income;

(c) WAC ((~~388-475-0700~~)) 182-512-0700 Income eligibility;

(d) WAC ((~~388-475-0750~~)) 182-512-0750 Countable unearned income;

(e) WAC ((~~388-475-0840(3)~~)) 182-514-0840(3) Self employment income-allowable expenses;

(f) WAC ((~~388-513-1315(16)~~)) 388-513-1315(15), Eligibility for long-term care (institutional, waiver, and hospice) services; and

(g) WAC 388-450-0155, 388-450-0156 ((~~and~~)), 388-450-0160 and 182-509-0155 for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

AMENDATORY SECTION (Amending WSR 07-17-152, filed 8/21/07, effective 10/1/07)

WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC ((~~388-475-0600~~)) 182-512-0600 Definition of income SSI-related medical;

(b) WAC ((~~388-475-0650~~)) 182-512-0650 Available income;

(c) WAC ((~~388-475-7000~~)) 182-512-0700 Income eligibility;

(d) WAC ((~~388-475-0750~~)) 182-512-0750 Countable unearned income;

(e) WAC ((~~388-475-0840(3)~~)) 182-512-0840(3) Self-employment income-allowance expenses;

(f) WAC ((~~388-506-0620~~)) 182-512-0960, SSI-related medical clients; and

(g) WAC 388-513-1315 ((~~(15) and (16)~~)), Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a ((~~fair hearing~~)) court order.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(d) If the total of subsection (4)(c) plus the client's own income is over the SIL, follow subsection (2).

(5) ((~~If both spouses are either applying or approved for LTC services, then:~~

~~(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and~~

~~(b) Adds the separate income of each spouse respectively to determine available income for each of them.~~

~~(6)~~)) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(((~~7~~))) (6) The department considers income available to the client not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the stream of income to:

(a) The spouse; or

(b) A trust for the benefit of ((~~the~~)) their spouse.

(8) The department evaluates the transfer of a resource described in subsection (((~~6~~))) (5) according to WAC 388-513-1363, 388-513-1364, and 388-513-1365 ((~~and 388-513-1366~~)) to determine whether a penalty period of ineligibility is required.

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 09-09-101, filed 4/20/09, effective 5/21/09)

WAC 388-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the department excludes when determining a client's eligibility and participation in the cost of care for LTC services with the exception described in subsection (31).

(1) Crime victim's compensation;

(2) Earned income tax credit (EITC) for twelve months after the month of receipt;

(3) Native American benefits excluded by federal statute (refer to WAC 388-450-0040);

(4) Tax rebates or special payments excluded by other statutes;

(5) Any public agency's refund of taxes paid on real property and/or on food;

(6) Supplemental security income (SSI) and certain state public assistance based on financial need;

(7) The amount a representative payee charges to provide services when the services are a requirement for the client to receive the income;

(8) The amount of expenses necessary for a client to receive compensation, e.g., legal fees necessary to obtain settlement funds;

(9) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution;

(10) Child support payments received from an absent parent for a child living in the home are considered the income of the child;

(11) Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);

(12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;

(13) Assistance (other than wages or salary) received under the Older Americans Act;

(14) Assistance (other than wages or salary) received under the foster grandparent program;

(15) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;

(17) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;

(18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

(19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(20) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

(21) Payments made under the Energy Employee Occupational Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

(22) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

(((~~22~~))) (23) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

(((~~23~~))) (24) Payments made from *Susan Walker v. Bayer Corporation, et, al*., 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

(((~~24~~))) (25) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

(((~~25~~))) (26) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

(((~~26~~))) (27) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(((~~27~~))) (28) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

(((~~28~~))) (29) Interest or dividends received by the client is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bond, or savings accounts. Institutional status is defined in WAC 388-513-1320;

(((~~29~~))) (30) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, e.g., chore services;

(((~~30~~))) (31) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (((~~(31)~~))) (32);

(((~~(31)~~))) (32) Benefits described in subsection (((~~(30)(b)~~))) (31)(b) for a client who ((~~resides in a state veterans' home and has no dependents~~)) receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining ((~~participation~~)) the amount the client contributes in the cost of care.

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the department disregards when determining a client's eligibility for institutional or hospice services under the MN program. The department considers disregarded income available when determining a client's participation in the cost of care.

(1) The department disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a client is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a client who is related to the supplemental security income (SSI) program as described in WAC ((~~388-475-0050(1)~~)) 182-512-0050(1), the first sixty-five dollars per month of earned income not excluded under WAC 388-513-1340, plus one-half of the remainder.

(3) ((~~For a TANF/SFA-related client, fifty percent of gross earned income.~~

~~(4) Department of Veterans Affairs benefits if:~~

~~(a) Those benefits are designated for:~~

~~(i) Unusual medical expenses;~~

~~(ii) Aid and attendance allowance; or~~

~~(iii) Housebound allowance; and~~

~~(b) The client:~~

~~(i) Resides in a state veterans' home; and~~

~~(ii) Has no dependents~~)) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (4).

(4) Benefits described in subsection (3)(b) for a client who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the client contributes in the cost of care.

(5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

AMENDATORY SECTION (Amending WSR 09-12-058, filed 5/28/09, effective 7/1/09)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (((~~(8)~~))) (9) through (((~~(11)~~))) (12) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (((~~(3)~~))) (4) of this section applies.

(2) Effective January 1, 2012 if an individual purchases a qualified long-term care partnership policy approved by the Washington Insurance Commissioner under the Washington long-term care partnership program, the department allows the individual with the long-term care partnership policy to retain a higher resource amount based on the dollar amount paid out by a partnership policy. This is described in WAC 388-513-1400.

(3) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(((~~(3)~~))) (4) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(((~~(4)~~))) (5) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(((~~(5)~~))) (6) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(((~~(6)~~))) (7) The department applies the following rules when determining available resources for LTC services:

(a) WAC ((~~388-475-0300~~)) 182-512-0300, Resource eligibility;

(b) WAC ((~~388-475-0250~~)) 182-512-0250, How to determine who owns a resource; and

(c) WAC ((~~388-470-0060(6)~~)) 388-470-0060, Resources of an alien's sponsor.

(((~~(7)~~))) (8) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC ((~~388-475-0350~~)) 182-512-0350 through ((~~388-475-0550~~)) 182-512-0550 and resources excluded by federal law with the exception of:

(i) WAC ((~~388-475-0550(16);~~)) 182-512-0550 pension funds owned by an:

(I) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

(II) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(ii) WAC ((~~388-475-0350~~)) 182-512-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (((~~(2)~~))) (3), (((~~(5)~~))) (6) and (((~~(8)(a)~~))) (9)(a) or (b) apply, but not if subsection (((~~(3) or~~)) (4) or (5) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the facility that the client owes the expense to.

(ii) As long as the incurred medical expenses:

(A) Were not incurred more than three months before the month of the medicaid application;

(B) Are not subject to third-party payment or reimbursement;

(((~~(B)~~))) (C) Have not been used to satisfy a previous spend down liability;

(((~~(C)~~))) (D) Have not previously been used to reduce excess resources;

(((~~(D)~~))) (E) Have not been used to reduce client responsibility toward cost of care;

(((~~(E)~~))) (F) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, and 388-513-1365 ((~~and 388-513-1366~~)); and

(((~~(F)~~))) (G) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or ((~~boarding home~~)) assisted living facility is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to ((~~nonexcluded~~)) countable income, the combined total is less than the:

(A) ((~~Private~~)) State medical institution rate based on the number of days in the medical institution in the month, plus the amount of recurring medical expenses ((~~for institutional services~~)); or

(B) ((~~Private~~)) State hospice rate based on the number of days in the medical institution in the month plus the amount of recurring medical expenses, ((~~for hospice services~~)) in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(((~~(8)~~))) (9) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(((~~(9)~~))) (10) If subsection (((~~(8)(b)~~))) (9)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard ((~~increases~~)) may change annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the ((~~beginning~~)) first day of the month of the current period of institutional status, up to the amount described in subsection (((~~(9)(a)~~))) (10)(a) of this section; or

(ii) The state spousal resource standard of ((~~forty-five thousand one hundred four dollars effective July 1, 2007 through June 30, 2009. Effective July 1, 2009 this standard increases to~~)) forty-eight thousand six hundred thirty-nine dollars (this standard ((~~increases~~)) may change every odd year on July 1st). This ((~~increase~~)) standard is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(((~~(10)~~))) (c) Resources are verified on the first moment of the first day of the month institutionalization began as described in WAC 182-512-0300(1).

(11) The amount of the spousal share described in (((~~(9)(b)(i)~~))) (10)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(((~~(11)~~))) (12) The amount of allocated resources described in subsection (((~~(9)~~))) (10) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(((~~(12)~~))) (13) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (((~~(5)~~))) (6) or (((~~(13)(a)~~))) (14)(a), (b), or (c) of this section applies.

(((~~(13)~~))) (14) A redetermination of the couple's resources as described in subsection (((~~(7)~~))) (8) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status; or

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (((~~(8)(b)~~))) (9)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (((~~(9)~~))) (10) or (((~~(11)~~))) (12) to the community spouse ((~~or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4)~~)) by either:

(i) The end of the month of the first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services. This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all-inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of

application, or while the client is receiving LTC services, requires a penalty period.

• Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006.

• Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(2) The department does not apply a penalty period to transfers meeting the following conditions:

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;

(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d);

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.

(iii) All assets transferred for less than fair market value have been returned to the client.

(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided verifiable care that enabled the individual to remain in the home. A physician's statement of needed care is required; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection ((~~(1)(f)~~)) (2)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 ((~~(6)~~)) (5) through ((~~(8)~~)) (7).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services;

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1365 for rules used to evaluate the transfer of an asset made before April 1, 2003. Refer to WAC 388-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the client's home meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home; and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset, if the transfer meets the conditions described in subsection (4), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c); or

(f) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c).

(2) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waivered services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(3) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (2) as the transfer of an asset without adequate consideration.

(4) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(e), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term or the trust, whichever is less; and

(d) The requirements in subsection (4)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b).

(5) If a client or the client's spouse transfers an asset within the look-back period described in WAC 388-513-1365 without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that begin on the latter of:

(i) The first day of the month in which the transfer is made; or

(ii) The first day after any previous penalty period has ended and end on the last day of the whole number of days as described in subsection (5)(a)(ii).

(6) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (6)(a) becomes an available resource as of the first day of the following month.

(7) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 ((~~(6)~~)) (5) through ((~~(8)~~)) (7).

(8) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (8)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (5)(a) and (b) and (8)(a) and (b) is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(9) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(10) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after March 1, 1997 and before April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. ((~~Refer to WAC 388-513-1366 for rules used to evaluate the transfer of an asset made before March 1, 1997.~~)) Refer to WAC 388-513-1364 for rules used to evaluate the transfer of an asset made on or after March 31, 2003. Refer to WAC 388-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department disregards the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department that satisfies one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(iii) A son or daughter, who:

(A) Lived in the home for at least two years immediately before the client's current period of institutional status; and

(B) Provided care that enabled the client to remain in the home; or

(iv) A brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset other than the home, if the transfer meets the conditions described in subsection (4), and the asset is transferred:

(i) To the client's spouse or to another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To the client's child who meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c) or to a trust established for the sole benefit of this child; or

(iv) To a trust established for the sole benefit of a person who is ((~~sixty-fours~~)) sixty-four years old or younger and meets the disability criteria described in WAC ((~~388-475-0050~~)) 182-512-0050 (1)(b) or (c).

(f) The transfer of an asset to a member of the client's family in exchange for care the family member provided the client before the current period of institutional status, if a written agreement that describes the terms of the exchange:

(i) Was established at the time the care began;

(ii) Defines a reasonable FMV for the care provided that reflects a time frame based on the actuarial life expectancy of the client who transfers the asset; and

(iii) States that the transferred asset is considered payment for the care provided.

(2) When the fair market value of the care described in subsection (1)(f) is less than the value of the transferred asset, the department considers the difference the transfer of an asset without adequate consideration.

(3) The department considers the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (1)(f) as the transfer of an asset without adequate consideration.

(4) The transfer of an asset or the establishment of a trust is considered to be for the sole benefit of a person described in subsection (1)(e), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable; and

(b) Provides for spending all funds involved for the benefit of the person for whom the transfer is made within a time frame based on the actuarial life expectancy of that person.

(5) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received on or after October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty-six months, if all or part of the assets were transferred on or after August 11, 1993; and

(b) Sixty months, if all or part of the assets were transferred into a trust as described in WAC 388-561-0100.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after March 1, 1997 and before April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that:

(i) Begin on the latter of:

(A) The first day of the month in which the transfer is made; or

(B) The first day after any previous penalty period has ended; and

(ii) End on the last day of the whole number of months as described in subsection (6)(a)(ii).

(7) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remains after an acquisition described in subsection (7)(a) becomes an available resource as of the first day of the following month.

(8) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (((~~(6)~~))) (5) through (((~~(8)~~))) (7).

(9) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in (9)(a) is divided by the statewide average monthly private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole months found by following subsections (9)(a) and (b) is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(10) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(11) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 07-17-005, filed 8/2/07, effective 9/2/07)

WAC 388-513-1367 Hardship waivers for long-term care (LTC) services. Clients who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC 388-513-1363, 388-513-1364 and 388-513-1365), or having excess home equity (described in WAC 388-513-1350) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

• Defines undue hardship;

• Specifies the approval criteria for an undue hardship request;

• Establishes the process the department follows for determining undue hardship; and

• Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a transfer of an asset occurs between:

(A) Registered domestic partners as described in chapter 26.60 RCW; or

(B) Same-sex couples who were married in states and the District of Columbia where same-sex marriages are legal; and

(C) The transfer would not have caused a period of ineligibility if made between an opposite sex married couple under WAC 388-513-1363.

(ii) When a client who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(((~~(ii)~~))) (iii) The client provides sufficient documentation to support their efforts to recover the assets or income; or

(((~~(iii)~~))) (iv) The client is unable to access home equity in excess of ((~~five hundred thousand dollars due to a lien or legal impediment~~)) the standard described in WAC 388-513-1350; and

(((~~(iv)~~))) (v) When, without LTC benefits, the client is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the client; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the client.

(d) Undue hardship may exist under (b) and (c) if DSHS has found evidence of financial exploitation.

(3) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative;

(iv) The client's power of attorney; or

(v) With the consent of the client or their guardian, a medical institution, as defined in WAC ((~~388-500-0005~~)) 182-500-0005, in which an institutionalized client resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a client, then the client's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

(4) What if additional information is needed to determine a hardship waiver?

(a) A written notice to the client is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the client.

(5) What happens if my hardship waiver is approved?

(a) The department sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship must be reported to the department by the tenth of the month following the change per WAC 388-418-0007.

(6) What happens if my hardship waiver is denied?

(a) The department sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The department must receive an administrative hearing request within ninety days of the date of the adverse action or denial.

(7) What statute or rules govern administrative hearings?

(a) An administrative hearing held under this section is governed by chapters 34.05 RCW and chapter 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(8) Can the department revoke an approved undue hardship waiver?

(a) The department may revoke approval of an undue hardship waiver if any of the following occur:

(i) A client, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested by the department per WAC 388-490-0005 and 388-418-0007 or 182-504-0125;

(ii) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

(iii) Circumstances for which the undue hardship was approved have changed.

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 09-07-037, filed 3/10/09, effective 4/10/09)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with gross income under the medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following clients who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in subsection (4)(a)(i) of this section who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a client living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving ((~~general assistance~~)) ABD cash assistance.

(v) ((~~Effective July 1, 2007 through June 30, 2008 fifty-five dollars and forty-five cents~~)) For all other clients in a medical institution((~~. Effective July 1, 2008 this~~)) the PNA ((~~increases to~~)) is fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at ((~~http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml~~)) http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the Supplemental Security Income (SSI) program as described in WAC ((~~388-475-0050(1)~~)) 182-512-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) ((~~Income~~)) Current or back child support garnished ((~~for child support or withheld according to a child support order in the month of garnishment (for current and back support)~~)) or withheld from income according to a child support order in the month of the garnishment if it is for the current month:

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance ((~~is increased~~)) may change each January based on the consumer price index ((~~increase (from September to September, http://www.bls.gov/cpi/~~)). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard ((~~increases~~)) may change annually on July 1st ((~~(http://aspe.os.dhhs.gov/poverty/)~~)); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) ((~~In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/)~~)) For each child, one hundred and fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income). This standard is called the community spouse (CS) and family maintenance standard and can be found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the effective one-person MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard ((~~increases~~)) may change annually on July 1st ((~~(http://aspe.os.dhhs.gov/poverty/)~~)) and is found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance ((~~for four persons~~)) described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: ((~~http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml~~)) http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

AMENDATORY SECTION (Amending WSR 07-19-129, filed 9/19/07, effective 10/20/07)

WAC 388-513-1395 Determining eligibility for institutional or hospice services for individuals living in a medical institution under the medically needy (MN) program. This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to determine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5). In addition, a client must meet program requirements described in WAC 388-513-1315; and

(a) Be an SSI-related client with countable income as described in subsection (4)(a) that is more than the special income level (SIL); or

(b) Be a child not described in subsection (1)(a) with countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.

(2) For an SSI-related client, excess resources ((~~can be~~)) are reduced by medical expenses as described in WAC 388-513-1350 to the resource standard for a single or married individual.

(3) The department determines a client's countable resources for institutional and hospice services under the MN programs as follows:

(a) For an SSI-related client, the department determines countable resources per WAC 388-513-1350.

(b) For a child not described in subsection (3)(a), no determination of resource eligibility is required.

(4) The department determines a client's countable income for institutional and hospice services under the MN program as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC 388-513-1325 and 388-513-1330 by:

(i) Excluding income described in WAC 388-513-1340;

(ii) Disregarding income described in WAC 388-513-1345; and

(iii) Subtracting previously incurred medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(b) For a child not described in subsection (4)(a), the department:

(i) Follows the income rules described in WAC ((~~388-505-0210~~)) 182-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in subsection (4).

(5) If the ((~~combined total of a client's countable income, when added to~~)) income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350(1), is less than the department-contracted rate ((~~plus the amount of recurring medical expenses,~~)) times the number of days residing in the facility the client:

(a) Is eligible for institutional or hospice services in a medical institution, and ((~~noninstitutional~~)) medical assistance;

(b) Is approved for twelve months; and

(c) Participates ((~~in~~)) income and excess resources toward the cost of care as described in WAC 388-513-1380.

(6) If the ((~~combined total of a client's countable~~)) income((~~, which when added to countable resources in excess of the standard described in WAC 388-513-1350(1) is less than the private nursing facility rate plus the amount of recurring medical expenses, but more than the department contracted rate,~~)) remaining after the allowed deductions described in WAC 388-513-1380 plus countable resources in excess of the standard described in WAC 388-513-1350(1) is more than the department-contracted rate times the number of days residing in the facility the client:

(a) Is not eligible for ((~~nursing facility care only and is approved for a three or six month base period as described in chapter 388-519 WAC~~)) payment of institutional services; and

(((~~i~~))) (b) ((~~Pays the nursing home at the current state rate~~)) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

(7) If the income remaining after the allowed deductions described in WAC 388-513-1380 is more than the department contracted nursing facility rate based on the number of days the client is in the facility, but less than the private nursing rate plus the amount of medical expenses not used to reduce excess resources the client:

(a) Is eligible for nursing facility care only and is approved for a three or six month based period as described in chapter 182-519 WAC. This does not include hospice in a nursing facility; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC 388-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) ((~~or (c) are~~)) is met.

(b) Is approved for medical assistance for a three or six month base period as described in chapter ((~~388-519~~)) 182-519 WAC, if:

(i) No income and resources remain after the post eligibility treatment of income process described in WAC 388-513-1380.

(ii) Medicaid certification is approved beginning with the first day of the base period.

(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income ((~~and resources~~)) remaining after the post eligibility treatment of income process described in WAC 388-513-1380.

(i) This process is known as spenddown and is described in WAC ((~~388-519-0100~~)) 182-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(((~~7~~))) (8) If the ((~~combined total of a client's nonexcluded income, which when added to nonexcluded resources is above the facility monthly private rate~~)) income remaining

after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:

(a) ((~~The client is ineligible using institutional rules~~)) Is not eligible for payment of institutional services.

(b) Eligibility is ((~~considered under a noninstitutional~~)) determined for medical assistance ((~~program~~)) only as described in chapter ((~~388-416 and 388-519~~)) 182-519 WAC.

NEW SECTION

WAC 388-513-1397 Treatment of entrance fees of individuals residing in continuing care retirement communities. The following rule applies to long-term care medicaid applicants who reside in a continuing care retirement communities or life care communities that collect an entrance fee on admission from residents:

(1) Treatment of Entrance Fee. An individual's entrance fee in a continuing care retirement community or life care community is considered a resource available to the individual to the extent that:

(a) The individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used to pay for care should other resources or income of the individual be insufficient to pay for care.

(b) The individual is eligible for a refund of any remaining entrance free when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(c) The entrance free does not confer an ownership interest in the continuing care retirement community or life care community.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1505 Long-term care home and community based services authorized by home and community services (HCS) and hospice. (1) This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) services administered by home and community services (HCS) and hospice services administered by ((~~health and recovery services administration (HRSA)~~)) the health care authority (HCA).

(2) The HCB service programs are:

(a) Community options program entry system (COPES);

(b) Program of all-inclusive care for the elderly (PACE);

(c) Washington medicaid integration partnership (WMIP); or

(d) New Freedom consumer directed services (New Freedom).

(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty-five days upon discharge from a medical institution.

(4) Hospice services if you don't reside in a medical institution and:

(a) Have gross income at or below the special income level (SIL); and

(b) Aren't eligible for another CN or medically needy (MN) medicaid program.

(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.

(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for medicaid using noninstitutional CN rules.

(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN medicaid described in WAC 388-515-1507(1).

(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1506 What are the general eligibility requirements for home and community based (HCB) services authorized by home and community services (HCS) and hospice? (1) To be eligible for home and community based (HCB) services and hospice you must:

(a) Meet the program and age requirements for the specific program:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705;

(iii) WMIP waiver services, per WAC 388-106-0750;

(iv) New Freedom, per WAC 388-106-1410;

(v) Hospice, per chapter ((~~388-551~~)) 182-551 WAC; or

(vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260.

(b) Meet the disability criteria for the Supplemental Security Income (SSI) program as described in WAC ((~~388-475-0050~~)) 182-512-0050;

(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;

(d) Be residing in a medical institution as defined in WAC ((~~388-500-0005~~)) 182-500-0050, or likely to be placed in one within the next thirty days without HCB services provided under one of the programs listed in subsection (1)(a);

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of services and be approved for a plan of care as described in subsection (1)(a);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through ((~~388-513-1366~~)) 388-513-1365;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(3) Current income and resource standard charts are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html.

AMENDATORY SECTION (Amending WSR 09-14-043, filed 6/24/09, effective 7/25/09)

WAC 388-515-1507 What are the financial requirements for home and community based (HCB) services authorized by home and community services (HCS) when you are eligible for a noninstitutional categorically needy (CN) medicaid program? (1) You are eligible for medicaid under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;

(b) SSI-related CN medicaid described in WAC ((~~388-475-0100~~)) 182-512-0100 (2)(a) and (b);

(c) SSI-related healthcare for workers with disabilities program (HWD) described in WAC ((~~388-475-1000~~)) 182-511-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC ((~~388-475-1250~~)) 182-511-1250. ((~~This change is effective April 1, 2009~~));

(d) ((~~General assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria~~)) Aged, blind, or disabled (ABD) cash assistance described in WAC ((~~388-505-0110(6)~~)) 388-400-0060 and are receiving CN medicaid.

(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through ((~~388-513-1366~~)) 388-513-1365. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.

(b) If subsection (6)(a) applies and you are receiving HWD described in WAC ((~~388-475-1000~~)) 182-511-1000, you are responsible to pay your HWD premium as described in WAC ((~~388-475-1250~~)) 182-511-1250, in addition to the ADSA room and board standard.

(7) If you are eligible for ((~~general assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6),~~)) aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under ((~~the general assistance program~~)) WAC 388-478-0033;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ((~~general assistance~~)) ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive an ABD cash grant of thirty-eight dollars and eighty-four cents as described in WAC 388-478-0045, which you keep for your PNA.

(8) Current resource and income standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(9) Current PNA and ADSA room and board standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartsubfile.shtml.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1508 How does the department determine if you are financially eligible for home and community based (HCB) services authorized by home and community services (HCS) and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)? (1) If you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1), the department must determine your eligibility using institutional medicaid rules. This section explains how you may qualify using institutional medicaid rules.

(2) You must meet the general eligibility requirements described in WAC 388-513-1315 and 388-515-1506.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 ((~~(d), (e) and (f)~~)) if you verify these expenses.

(4) You must meet the following income requirements:

(a) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); or

(b) For home and community based (HCB) service programs authorized by HCS your gross nonexcluded income is:

(i) Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(ii) Net income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing gross nonexcluded income by:

(A) Medically needy (MN) disregards found in WAC 388-513-1345; and

(B) The average monthly nursing facility state rate is five thousand six hundred and twenty six dollars. This rate will be updated annually starting October 1, 2012 and each year thereafter on October 1. This standard will be updated annually in the long-term care standard section of the EAZ manual described at http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(5) The department follows the rules in WAC 388-515-1325, 388-513-1330, and 388-513-1340 to determine available income and income exclusions.

(6) Current resource and income standards (including the SIL, MNIL and FBR) for long-term care are found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1509 How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508? If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon the following:

(1) If you are single and living at home as defined in WAC 388-106-0010, you keep all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA).

(2) If you are married living at home as defined in WAC 388-106-0010, you keep all your income up to the effective one-person medically needy income level (MNIL) for your PNA if your spouse lives at home with you. If you are married and living apart from your spouse, you're allowed to keep your income up to the FPL for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross ((~~nonexcluded~~)) nonexcluded income. The PNA is sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction is reduced by allowable deductions in the following order:

(a) If you are working, the department allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income.

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If the department allows this as deduction from your income, the department will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that ((~~you make~~)) your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard ((~~increases~~)) may change annually on July 1st (((~~http://aspe.os.dhhs.gov/poverty/~~))) and can be found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, ((~~minus~~)) plus;

(V) The food assistance standard utility allowance (SUA) (((~~for long-term care services this is set at the standard utility allowance for a four-person household),~~))) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard ((~~increases~~)) may change annually on July 1st (((~~http://aspe.os.dhhs.gov/poverty.)~~))) and can be found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; and

((~~(e)~~)) (VII) Is reduced by your community spouse's gross countable income.

((~~(f)~~)) (iii) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

((~~(i)~~)) (A) There is a court order approving ((~~the~~)) a higher amount for the support of your community spouse; or

((~~(ii)~~)) (B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

((~~(g)~~)) (e) A monthly maintenance needs amount for each minor or dependent child, dependent parent, or dependent sibling of your community or institutionalized spouse. The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, ((~~the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income~~)) for each child, one hundred fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one-person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(((h))) (f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(((i))) (g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowance in subsections (1), (2) and (3)(a) and (b); and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)(a); and

(iii) Guardianship fees and administrative costs in subsection (4)(b).

(5) You must pay your provider the combination of the room and board amount and the cost of personal care services after all allowable deductions.

(6) You may have to pay third party resources described in WAC ((388-501-0200)) 182-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(8) If you are in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB services), the department allows you the highest PNA available based on all the living arrangements and services you have in a month.

(9) Current PNA and ADSA room and board standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartsubfile.shtml.

AMENDATORY SECTION (Amending WSR 08-11-083, filed 5/20/08, effective 6/20/08)

WAC 388-515-1510 Division of developmental disabilities (DDD) home and community based services waivers. The four sections that follow describe the general and financial eligibility requirements for the division of developmental disabilities (DDD) home and community based services (HCBS) waivers.

(1) WAC 388-515-1511 describes the general eligibility requirements under the ((four)) DDD HCBS waivers.

(2) WAC 388-515-1512 describes the financial requirements for the DDD waivers if you are eligible for medicaid under the noninstitutional categorically needy program (((CN-P))) (CN).

(3) WAC 388-515-1513 describes the initial financial requirements for the DDD waivers if you are not eligible for medicaid under a categorically needy program (((CN-P))) (CN) listed in WAC 388-515-1512(1).

(4) WAC 388-515-1514 describes the post eligibility financial requirements for the DDD waivers if you are not eligible for medicaid under a categorically needy program (((CN-P))) CN listed in WAC 388-515-1512(1).

AMENDATORY SECTION (Amending WSR 08-11-083, filed 5/20/08, effective 6/20/08)

WAC 388-515-1511 What are the general eligibility requirements for waiver services under the ((four)) division of developmental disabilities (DDD) home and community based services (HCBS) waivers? (1) This section describes the general eligibility requirements for waiver services under the ((four)) DDD home and community based services (HCBS) waivers.

(((1) The four DDD HCBS waivers are:
(a) Basic;
(b) Basic plus;
(c) Core; and
(d) Community protection.))

(2) The requirements for services for DDD HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD HCBS waivers. To be eligible, you must:

(a) Be an eligible client of the division of developmental disabilities (DDD);

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC ((388-475-0050)) 182-512-0050;

(c) Require the level of care provided in an intermediate care facility for the ((mentally retarded (ICF/MR))) intellectually disabled (ICF/ID);

(d) Have attained institutional status as described in WAC 388-513-1320;

(e) Be able to reside in the community and choose to do so as an alternative to living in an ((ICF/MR)) ICF/ID;

(f) Need waiver services as determined by your plan of care or individual support plan, and:

(i) Be able to live at home with waiver services; or

(ii) Live in a department contracted facility, which includes:

(A) A group home;

(B) Group training home;

(C) Child foster home, group home or staffed residential facility;

(D) Adult family home (AFH); or

(E) Adult residential care (ARC) facility.

(iii) Live in your own home with supported living services from a certified residential provider; or

(iv) Live in the home of a contracted companion home provider; and

(g) Be both medicaid eligible under the categorically needy program (((CN-P))) (CN) and be approved for services by the division of developmental disabilities.

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

WAC 388-515-1512 What are the financial requirements for the DDD waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (((CN-P))) (CN)? (1) You automatically meet income and resource eligibility for DDD waiver services if

you are eligible for medicaid under a categorically needy program ((~~(CN-P)~~)) (CN) under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;

(b) Healthcare for workers with disabilities (HWD) described in WAC ((~~388-475-1000~~)) 182-511-1000 through ((~~388-475-1250~~)) 182-511-1250;

(c) SSI-related ((~~CN-P~~)) (CN) medicaid described in WAC ((~~388-475-0100~~)) 182-512-0100 (2)(a) and (b) or meets the requirements in WAC ((~~388-475-0880~~)) 182-512-0880 and is ((~~CN-P~~)) (CN) eligible after the income disregards have been applied;

(d) ((~~CN-P~~)) CN medicaid for a child as described in WAC ((~~388-505-0210~~)) 182-505-0210 (1), (2), (7) or (8); or

(e) ((~~General assistance expedited medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6)~~)) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.

(2) If you are eligible for a ((~~CN-P~~)) CN medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a ((~~CN-P~~)) CN medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a ((~~CN-P~~)) CN medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 3((~~88-515-1505~~)) 388-515-1507. Room and board and long-term care standards are located at ((~~http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml~~)) http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents.

(5) If you are eligible for a premium based medicaid program such as healthcare for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program.

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 08-11-083, filed 5/20/08, effective 6/20/08)

WAC 388-515-1513 How does the department determine if I am financially eligible for DDD waiver service medical coverage if I am not eligible for medicaid under a categorically needy program ((~~(CN-P)~~)) (CN) listed in WAC 388-515-1512(1)? If you are not eligible for medicaid under a categorically needy program ((~~(CN-P)~~)) (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed ((~~under WAC 388-515-1350, we may reduce the amount we are required to count if you have unpaid medical expenses.~~

~~(a) We will reduce your resources in an amount equal to the unpaid medical expenses you verify. The anticipated cost of your waiver services cannot be used as a medical expense to qualify for this deduction.~~

~~(b) If your remaining resources, after the deduction in section (1)(a) are still over the standard, you are ineligible until your resources are below the standard.~~

~~(c)~~)), we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.

(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through ((~~388-513-1366~~)) 388-513-1365.

(d) ((~~Equity in your home is five hundred thousand dollars or less as~~)) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(((~~(2)~~))) (3) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

(4) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards for long-term care services.

(5) Current income and resources standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

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 08-24-069, filed 12/1/08, effective 1/1/09)

WAC 388-515-1514 How does the department determine how much of my income I must pay towards the cost of my ((~~care~~)) DDD waiver services if I am not eligible for medicaid under a categorically needy program ((~~(CN-P)~~)) (CN) listed in WAC 388-515-1512(1)? If you are not eligible for medicaid under a categorically needy program ((~~(CN-P)~~)) (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the ADSA room and board rate described in ((~~http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml~~)) http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(3) ((~~Income that remains after the allocation~~)) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income ((~~or withheld~~)) according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard ((~~increases~~)) may change annually on July 1st ((~~(http://aspe.os.dhhs.gov/poverty/)~~)) and can be found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative ((~~minus~~)) plus;

(V) The food assistance standard utility allowance (((~~(for long term care services this is set at the standard utility allowance (SUA) for a four-person household),~~)) (SUA) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard ((~~increases~~)) may change annually on July 1st ((~~(http://aspe.os.dhhs.gov/poverty)~~)) and can be found at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, ((~~the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income~~)) for each child, one hundred fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one-person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(4) If you are eligible for ((~~general assistance expedited medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6),~~)) aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ((~~general assistance~~)) ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ((~~general assistance~~)) ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard described in ((~~http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml~~)) http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) ((~~The combination of the~~)) You may have to pay third party resources (TPR) described in WAC 182-501-0200

in addition to room and board ((~~amount~~)) and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003 through March 31, 2012. Effective 4/1/2012 home and community based services authorized by home and community services (HCS) combines the categorically needy and medically needy programs described in WAC 388-515-1505 and 388-515-1508.

This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for medicaid personal care or the COPES program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC ((~~388-475-0050~~)) 182-514-0050;

(d) Requires the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0400, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Has attained institutional status as described in WAC 388-513-1320;

(g) Has been determined to be in need of waiver services as described in WAC 388-106-0410;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

(i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, and 388-513-1365 ((~~and 388-513-1366~~)); and

(j) Meets the resource and income requirements described in subsections (2) through (6).

(2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350;

(3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; or

(iii) Necessary medical care covered under the state's medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spend down liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNRW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except medicare premiums.

(6) If the client's countable income is:

(a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC 388-106-0435;

(b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC 388-106-0435.

(7) The portion of a client's countable income over the department-contracted rate is called "excess income."

(8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.

(9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505. (Long-term care standards can be found at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources described in WAC 388-513-1350;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources described in WAC 388-513-1350.

AMENDATORY SECTION (Amending WSR 07-03-087, filed 1/18/07, effective 2/18/07)

WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004 through March 31, 2012. Effective 4/1/2012 home and community based services authorized by home and community services (HCS) combines the categorically needy and medically needy programs described in WAC 388-515-1505 and 388-515-1508.

This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNIW, a client must:

(a) Not meet financial eligibility for medicaid personal care or the COPES program;

(b) Be eighteen years of age or older;

(c) Meet the SSI-related criteria described in WAC ((~~388-475-0050(1)~~)) 182-512-0050(1);

(d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Have attained institutional status as described in WAC 388-513-1320;

(g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;

(h) Be able to live at home with community support services and choose to remain at home;

(i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364((,)) and 388-513-1365 ((~~and 388-513-1366~~)); and

(j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350.

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be at or below the resource standard described in WAC 388-513-1350.

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; or

(iii) Necessary medical care covered under the state's medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

(iv) Have not previously been used to reduce excess resources;

(v) Have not been used to reduce client responsibility toward cost of care; and

(vi) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the effective one-person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the effective one-person MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the effective one-person MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the effective one-person MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; and

(iii) Necessary medical care covered under the state's medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person federal poverty level (FPL) described in WAC ((~~388-478-0075(4)~~)) 182-505-0100;

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

WSR 12-23-003
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed November 7, 2012, 1:47 p.m., effective December 8, 2012]

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

Purpose: Initiative 1183 changed the state of Washington from a controlled liquor system to a privatized liquor system. Rules needed to be written to reflect internet sales and delivery of spirits, formalize associated public safety regulations, and to provide clear direction to spirits retail liquor licensees in these areas.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 12-19-033 on September 12, 2012.

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

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

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

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

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

Date Adopted: November 7, 2012.

Sharon Foster
Chairman

NEW SECTION

WAC 314-03-030 Consumer orders, internet sales, and delivery for spirits retail licensees. A spirit retail licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed retail location.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits retail licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits retail licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a spirits retail licensee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell spirits via the internet, a new spirits retail license applicant must request internet-sales privileges in his or her application. An existing spirits retail licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits retail licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display the spirits retail licensee's registered trade name.

(12) **Accountability.** A spirits retail licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

WSR 12-23-005
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-11—Filed November 7, 2012, 4:32 p.m., effective November 20, 2012]

Effective Date of Rule: November 20, 2012.

Purpose: The purpose of the rules is to harmonize requirements for carrier grievance and appeal processes for grandfathered plans, and grievance and adverse benefit determination review processes for nongrandfathered plans, with federal law, and to simplify the grievance resolution processes required of carriers.

The United States Department of Health and Human Services (HHS) deemed our state to be in compliance with the Affordable Care Act's (ACA) requirements for review of adverse benefit determinations based on an emergency rule that expires on November 20, 2012. This rule must be effective prior to November 20, 2012, to maintain continuity of law so that the HHS determination is not jeopardized. If HHS were to withdraw its determination due to a lapse of these rules, as of January 1, 2012, all appeals of adverse benefit determination would be subject to the federal process, creating confusion for consumers, issuers and independent review organizations. The stability of the individual and small group markets is best served by continuing to be deemed compliant with federal law.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-130 and 284-43-615.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.525, 48.43.530, and 48.43.535.

Other Authority: The Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended (2010).

Adopted under notice filed as WSR 12-18-075 on September 5, 2012.

A final cost-benefit analysis is available by contacting Meg Jones, P.O. Box 40258, Olympia, WA, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator @oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 3, 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 15, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 15, 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 15, Amended 3, Repealed 0.

Date Adopted: November 7, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" ((~~and noncertification" means a decision by a health carrier to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits including the admission to or continued stay in a facility~~)) has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for med-

ical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services under the auspices of the applicable health plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" means an individual covered by a health plan including an enrollee, subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" ((~~means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department~~)) has the meaning set forth in RCW 48.43.005.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" ((~~means a written or an oral complaint submitted by or on behalf of a covered person regarding:~~

~~(a) Denial of health care services or payment for health care services; or~~

~~(b) Issues other than health care services or payment for health care services including dissatisfaction with health care services, delays in obtaining health care services, conflicts with carrier staff or providers, and dissatisfaction with carrier practices or actions unrelated to health care services~~)) has the meaning set forth in RCW 48.43.005.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(15) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(16) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(17) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit ((~~if~~)) because the service is consistent with generally recognized standards within a relevant health profession.

(18) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(19) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

(20) "Network" means the group of participating providers and facilities providing health care services to a particular health plan. A health plan network for carriers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(21) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology,* published by the American Medical Association.

(22) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(24) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(25) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(26) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(27) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(28) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005((~~(24)~~)) (33) comprising from one to fifty eligible employees.

(29) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(30) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

SUBCHAPTER E
ADVERSE BENEFIT DETERMINATION PROCESS REQUIREMENTS

FOR NONGRANDFATHERED PLANS

NEW SECTION

WAC 284-43-500 Scope and intent. Carriers and not grandfathered plans must follow the rules in this subchapter in order to comply with the adverse benefit determination process required by RCW 48.43.530 and 48.43.535. These rules apply to any request for a review of an adverse benefit determination made by a carrier or its designee on or after January 1, 2012.

NEW SECTION

WAC 284-43-505 Definitions. These definitions apply to the sections in this subchapter, WAC 284-43-510 through 284-43-550:

"Adverse benefit determination" has the same meaning as defined in RCW 48.43.005 and WAC 284-43-130.

"Appellant" means an applicant or a person covered as an enrollee, subscriber, policy holder, participant, or beneficiary of an individual or group health plan, and when designated, their representative. Consistent with the requirements of WAC 284-43-410, providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

"Internal appeal or review" means an appellant's request for a carrier or health plan to review and reconsider an adverse benefit determination.

"External appeal or review" means the request by an appellant for an independent review organization to determine whether the carrier or health plan's internal appeal decisions are correct.

NEW SECTION

WAC 284-43-510 Review of adverse benefit determinations—Generally. (1) Each carrier must establish and implement a comprehensive process for the review of adverse benefit determinations. The process must offer an appellant the opportunity for both internal review and external review of an adverse benefit determination. The process

must meet accepted national certification standards such as those used by the National Committee for Quality Assurance, except as otherwise required by this chapter.

(2) Neither a carrier nor a health plan may take or threaten to take any punitive action against a provider acting on behalf of or in support of an appellant.

(3) When the appeal is related to services the appellant is currently receiving as an inpatient, or for which a continuous course of treatment is medically necessary, coverage for those services must be continued while an adverse benefit determination is reviewed. Appellants must be notified that they may be responsible for the cost of services if the adverse benefit determination is upheld.

(4) A carrier must accept a request for internal review of an adverse benefit determination if the request is received within one hundred eighty days of the appellant's receipt of a determination under the plan. A carrier must notify an appellant of its receipt of the request within seventy-two hours of receiving the request.

(5) Each carrier and health plan must maintain a log of each adverse benefit determination review, its resolution, and the dates of receipt, notification, and determination.

(a) The carrier must make its review log available to the commissioner upon request in a form accessible by the commissioner. The log must be maintained by the carrier for a six-year period.

(b) Each carrier must identify, evaluate, and make available to the commissioner data and reports on trends in reviews for at least a six-year time frame, including the data on the number of adverse benefit determination reviews, the subject matter of the reviews and their outcome.

(c) When a carrier resolves issues related to an adverse benefit determination over the phone, without receiving a formal request for review, the carrier must include in these resolutions in its review log. A carrier's actions that are not in response to a member's call regarding an adverse benefit determination do not need to be included in the adverse benefit determination review log.

NEW SECTION

WAC 284-43-511 Explanation of right to review. A carrier must clearly communicate in writing the right to request a review of an adverse benefit determination.

(1) At a minimum, the notice must be sent at the following times:

(a) Upon request;

(b) As part of the notice of adverse benefit determination;

(c) To new enrollees at the time of enrollment; and

(d) Annually thereafter to enrollees, group administrators, and subcontractors of the carrier.

(e) The notice requirement is satisfied if the description of the internal and external review process is included in or attached to the summary health plan descriptions, policy, certificate, membership booklet, outline of coverage or other evidence of coverage provided to participants, beneficiaries, or enrollees.

(2) Each carrier and health plan must ensure that its network providers receive a written explanation of the manner in which adverse benefit determinations may be reviewed on both an expedited and nonexpedited basis.

(3) Any written explanation of the review process must include information about the availability of Washington's designated ombudsman's office, the services it offers, and contact information. A carrier's notice must also specifically direct appellants to the office of the insurance commissioner's consumer protection division for assistance with questions and complaints.

(4) The review process must be accessible to persons who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to request review or participate in the review process.

(a) Carriers must conform to federal requirements to provide notice of the process in a culturally and linguistically appropriate manner to those seeking review.

(b) In counties where ten percent or more of the population is literate in a specific non-English language, carriers must include in notices a prominently displayed statement in the relevant language or languages, explaining that oral assistance and a written notice in the non-English language are available upon request. Carriers may rely on the most recent data published by the U.S. Department of Health and Human Services Office of Minority Health to determine which counties and which languages require such notices.

(c) This requirement is satisfied if the National Commission on Quality Assurance certifies the carrier is in compliance with this standard as part of the accreditation process.

(5) Each carrier must consistently assist appellants with understanding the review process. Carriers may not use and health plans may not contain procedures or practices that the commissioner determines discourage an appellant from any type of adverse benefit determination review.

(6) If a carrier reverses its initial adverse benefit determination, which it may at any time during the review process, the carrier or health plan must provide appellant with written or electronic notification of the decision immediately, but in no event more than two business days of making the decision.

NEW SECTION

WAC 284-43-515 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

(a) To an appellant or their authorized representative; and

(b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider.

(2) A carrier or health plan's notice must include the following information, worded in plain language:

(a) The specific reasons for the adverse benefit determination;

(b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;

(c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;

(d) The time limits applicable to the review; and

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(5) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(6) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(7) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(8) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."

NEW SECTION

WAC 284-43-520 Electronic disclosure and communication by carriers. (1) Except as otherwise provided by applicable law, rule, or regulation, a carrier furnishing documents through electronic media is deemed to satisfy the notice and disclosure requirements regarding adverse benefit determinations with respect to applicants, covered persons, and appellants or their representative, if the carrier takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents, including ensuring that its measures:

(a) Result in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information);

(b) Protect the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by individuals other than the individual for whom the information is intended);

(c) Provide notice in electronic or nonelectronic form, at the time a document is furnished electronically, that apprises the recipient of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes the internal review process used by your plan) and of the right to request and obtain a paper version of such document; and

(d) Furnish the appellant or their representative with a paper version of the electronically furnished documents if requested.

(2) Subsection (1) of this section only applies to the following individuals:

(a) An appellant who affirmatively consents, in electronic or nonelectronic form, to receiving documents through electronic media and has not withdrawn such consent.

(b) In the case of documents to be furnished through the internet or other electronic communication network, one that has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(c) Prior to consenting, is provided, in electronic or nonelectronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the individual's electronic address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and

(v) Any hardware and software requirements for accessing and retaining the documents.

(3) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents, the carrier must provide:

(a) A statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(b) The individual receiving electronic communications with the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent.

(c) The carrier must request and receive a new consent to the receipt of documents through electronic media, following a hardware or software requirement change as described in this subsection.

NEW SECTION

WAC 284-43-525 Internal review of adverse benefit determinations. An appellant seeking review of an adverse benefit determination must use the carrier's review process. Each carrier must include the opportunity for internal review of an adverse benefit determination in its review process. Treating providers may seek expedited review on a patient's behalf, regardless of whether the provider is affiliated with the carrier on a contracted basis.

(1) When a carrier receives a written request for review, the carrier must reconsider the adverse benefit determination. The carrier must notify the appellant of the review decision within fourteen days of receipt of the request for review, unless the adverse benefit determination involves an experimental or investigational treatment. The carrier must notify the appellant of the review decision within twenty days of receipt of the request for review when the adverse benefit determination involves an experimental or investigational treatment.

(2) For good cause, a carrier may extend the time it takes to make a review determination by up to sixteen additional days without the appellant's written consent, and must notify appellant of the extension and the reason for the extension. The carrier may request further extension of its response time only if the appellant consents to a specific request for a further extension, the consent is reduced to writing, and includes a specific agreed-upon date for determination. In its request for the appellant's consent, the carrier must explain that waiver of the response time is not compulsory.

(3) The carrier must provide the appellant with any new or additional evidence or rationale considered, whether relied upon, generated by, or at the direction of the carrier in connection with the claim. The evidence or rationale must be provided free of charge to the appellant and sufficiently in advance of the date the notice of final internal review must be provided. The purpose of this requirement is to ensure the appellant has a reasonable opportunity to respond prior to that date. If the appellant requests an extension in order to respond to any new or additional rationale or evidence, the carrier and health plan must extend the determination date for a reasonable amount of time, which may not be less than two days.

(4) A carrier's review process must provide the appellant with the opportunity to submit information, documents, written comments, records, evidence, and testimony, including information and records obtained through a second opinion. An appellant has the right to review the carrier and health plan's file and obtain a free copy of all documents, records, and information relevant to any claim that is the subject of the determination being appealed.

(5) The internal review process must include the requirement that the carrier affirmatively review and investigate the appealed determination, and consider all information submitted by the appellant prior to issuing a determination.

(6) Review of adverse determinations must be performed by health care providers or staff who were not involved in the initial decision, and who are not subordinates of the persons involved in the initial decision. If the determination involves, even in part, medical judgment, the reviewer must be or must consult with a health care professional who has appropriate training and experience in the field of medicine encompassing the appellant's condition or disease and make a determination that is within the clinical standard of care for an appellant's disease or condition.

(7) The internal review process for group health plans may be administered so that an appellant must file two internal requests for review prior to bringing a civil action. For individual health plans, a carrier must provide for only one level of internal review before issuing a final determination, and may not require two levels of internal review.

(8) A rescission of coverage is an adverse benefit determination for which review may be requested.

NEW SECTION

WAC 284-43-530 Exhaustion of internal review remedies. (1) If a carrier fails to strictly adhere to its requirements with respect to the internal review, the internal review process is deemed exhausted, and the appellant may request external review without receiving an internal review determination from the carrier or the health plan.

(2) A carrier may challenge external review requested under this section on the basis that its violations are de minimis, and do not cause and are not likely to cause, prejudice or harm to the appellant. The carrier or health plan may challenge external review on this basis either in court or to the independent review organization.

(a) This exception applies only if the external reviewer or court determines that the carrier has demonstrated that the

violation was for good cause or was due to matters beyond the control of the carrier, and that the violation occurred in the context of an ongoing, good faith exchange of information between the carrier or health plan and the appellant.

(b) This exception is not available, and the challenge may not be sustained, if the violation is part of a pattern or practice of violations by the carrier or health plan.

(3) The appellant may request a written explanation of the violation from the carrier and the carrier must provide such explanation within ten calendar days, including a specific description of its basis, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted.

(4) If the independent review organization or court determines that the internal review process is not exhausted, based on a carrier or health plan's challenge under this section, the carrier or health plan must provide the appellant with notice that they may resubmit and pursue the internal appeal within a reasonable time, not to exceed ten days, of receiving the independent review organization's determination, or of the entry of the court's final order.

NEW SECTION

WAC 284-43-535 Notice of internal review determination. Each carrier's review process must require delivery of written notification of the internal review determination to the appellant. In addition to the requirements of WAC 284-43-515, the written determination must include:

(1) The actual reasons for the determination;

(2) If applicable, instructions for obtaining further review of the determination, either through a second level of internal review, if applicable, or using the external review process;

(3) The clinical rationale for the decision, which may be in summary form; and

(4) Instructions on obtaining the clinical review criteria used to make the determination;

(5) A statement that the appellant has up to one hundred eighty days to file a request for external review, and that if review is not requested, the internal review decision is final and binding.

NEW SECTION

WAC 284-43-540 Expedited review. (1) A carrier's internal and external review processes must permit an expedited review of an adverse benefit determination at any time in the review process, if:

(a) The appellant is currently receiving or is prescribed treatment or benefits that would end because of the adverse benefit determination; or

(b) The ordering provider for the appellant, regardless of their affiliation with the carrier or health plan, believes that a delay in treatment based on the standard review time may seriously jeopardize the appellant's life, overall health or ability to regain maximum function, or would subject the appellant to severe and intolerable pain; or

(c) The determination is related to an issue related to admission, availability of care, continued stay, or emergency health care services where the appellant has not been discharged from the emergency room or transport service.

(2) An appellant is not entitled to expedited review if the treatment has already been delivered and the review involves payment for the delivered treatment, if the situation is not urgent, or if the situation does not involve the delivery of services for an existing condition, illness, or disease.

(3) An expedited review may be filed by an appellant, the appellant's authorized representative, or the appellant's provider orally, or in writing.

(4) The carrier must respond as expeditiously as possible to an expedited review request, preferably within twenty-four hours, but in no case longer than seventy-two hours.

(a) The carrier's response to an expedited review request may be delivered orally, and must be reduced to and issued in writing not later than seventy-two hours after the date of the decision. Regardless of who makes the carrier's determination, the time frame for providing a response to an expedited review request begins when the carrier first receives the request.

(b) If the carrier requires additional information to determine whether the service or treatment determination being reviewed is covered under the health plan, or eligible for benefits, they must request such information as soon as possible after receiving the request for expedited review.

(5) If the treating health care provider determines that a delay could jeopardize the covered person's health or ability to regain maximum function, the carrier must presume the need for expedited review, and treat the review request as such, including the need for an expedited determination of an external review under RCW 48.43.535.

(6) A carrier may require exhaustion of the internal appeal process before an appellant may request an external review in urgent care situations that justify expedited review as set forth in this section.

(7) An expedited review must be conducted by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer or peers must not have been involved in making the initial adverse determination.

(8) These requirements do not replace the requirements related to utilization review for the initial authorization of coverage for services set forth in WAC 284-43-410. These requirements apply when the utilization review decision results in an adverse benefit determination. In some circumstances, an urgent care review under WAC 284-43-410 may apply in an identical manner to an expedited review under this section.

NEW SECTION

WAC 284-43-545 Concurrent expedited review of adverse benefit determinations. (1) "Concurrent expedited review" means initiation of both the internal and external expedited review simultaneously to:

(a) Review of a decision made under WAC 284-43-410; or

(b) Review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional or other inpatient or outpatient health care setting so that the

final adverse benefit determination is reached as expeditiously as possible.

(2) A carrier must offer the right to request concurrent expedited internal and external review of adverse benefit determinations. When a concurrent expedited review is requested, a carrier may not extend the timelines by making the determinations consecutively. The requisite timelines must be applied concurrently.

(3) A carrier may deny a request for concurrent expedited review only if the conditions for expedited review in WAC 284-43-540 are not met. A carrier may not require exhaustion of internal review if an appellant requests concurrent expedited review.

NEW SECTION

WAC 284-43-550 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external independent review of the final internal adverse benefit determination. Carriers and health plans must inform appellants of their right to external independent review, and explain the process to exercise that right. If the appellant requests an external independent review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or that the requested service or supply is not efficacious or otherwise unjustified under evidence-based medical criteria. The carrier may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external independent review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers, are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider;

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan; and

(d) Within one day of selecting the IRO, notify the appellant of the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the IRO will accept additional information in writing from the appellant for up to five business days after it receives the assignment. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

SUBCHAPTER F
((~~GRIEVANCE AND COMPLAINT PROCEDURES~~)) GRANDFATHERED HEALTH PLAN APPEAL PROCEDURES

NEW SECTION

WAC 284-43-611 Application of subchapter F. Subchapter F applies to grandfathered health plans. For any grandfathered health plan as defined in RCW 48.43.005, a carrier may comply with RCW 48.43.530 and 48.43.535 by using an appeal process that conforms to the procedures and standards set forth in WAC 284-43-615 through 284-43-630.

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-615 Grievance and complaint procedures—Generally. (1) Each carrier must adopt and implement a comprehensive process for the resolution of ((~~covered persons' grievances and~~)) appeals of adverse determinations. This process shall meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(2) This process must conform to the provisions of this chapter and each carrier must:

(a) Provide a clear explanation of the ((~~grievance~~)) appeal process upon request, upon enrollment to new ((~~covered persons~~)) enrollees, and annually to ((~~covered person~~)) enrollees and subcontractors of the carrier.

(b) Ensure that the ((~~grievance~~)) appeal process is accessible to enrollees who are limited-English speakers, who have

literacy problems, or who have physical or mental disabilities that impede their ability to file ((~~a grievance~~)) an appeal.

(c) ((~~Process as a grievance a covered person's expression of dissatisfaction about customer service or the quality or availability of a health service.~~

(~~d~~))) Implement procedures for registering and responding to oral and written ((~~grievances~~)) appeals in a timely and thorough manner including the notification of ((~~a covered person~~)) an enrollee that ((~~a grievance or~~)) an appeal has been received.

(((~~e~~))) (d) Assist the ((~~covered person~~)) enrollee with all ((~~grievance and~~)) appeal processes.

(((~~f~~))) (e) Cooperate with any representative authorized in writing by the ((~~covered person~~)) enrollee.

(((~~g~~))) (f) Consider all information submitted by the ((~~covered person~~)) enrollee or representative.

(((~~h~~))) (g) Investigate and resolve all ((~~grievances and~~)) appeals.

(((~~i~~))) (h) Provide information on the ((~~covered person's~~)) enrollee's right to obtain second opinions.

(((~~j~~))) (i) Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a written log of all appeals; and identify and evaluate trends in appeals. The written log may be maintained electronically.

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-620 Procedures for review and appeal of adverse determinations. (1) ((~~A covered person~~)) An enrollee or the ((~~covered person's~~)) enrollee's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the ((~~covered person~~)) enrollee may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the ((~~covered person~~)) enrollee of its decision within fourteen days of receipt of the appeal unless the carrier notifies the ((~~covered person~~)) enrollee that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the ((~~covered person~~)) enrollee.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the ((~~covered person's~~)) enrollee's life or materially jeopardize the ((~~covered person's~~)) enrollee's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the ((~~covered person's~~)) enrollee's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC 284-43-630.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of ((~~a covered person~~)) an enrollee appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the ((~~covered person's~~)) enrollee's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the ((~~covered person~~)) enrollee or a provider acting on behalf of the ((~~covered person~~)) enrollee.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the ((~~covered person~~)) enrollee a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

SUBCHAPTER G
GRIEVANCES

NEW SECTION

WAC 284-43-711 Definition. This definition applies to subchapter G. "Grievant" means a person filing a grievance as defined in WAC 284-43-130, and who is not an appellant under either subchapter E or F of this chapter.

NEW SECTION

WAC 284-43-721 Grievance process—Generally. This section applies to a health benefit plan regardless of its status as grandfathered or nongrandfathered.

(1) Each carrier and health plan must offer applicants, covered persons, and providers a way to resolve grievances.

(2) Each carrier must maintain a log or otherwise register grievances, and retain the log or record for three years. It must be available for review by the commissioner upon request. The log must provide sufficient detail to permit the commissioner to determine whether the carrier is administering its grievance process in accordance with the law, and in good faith, and to identify whether and in what manner the carrier adjusted practices or requirements in response to a grievance.

(3) Grievances are not adverse benefit determinations and do not establish the right to internal or external review of a carrier or health plan's resolution of the grievance.

(4) Nothing in this section prohibits a carrier from creating or using its own system to categorize the nature of grievances in order to collect data, if the system permits reporting of the data specified in subsection (2) of this section.

WSR 12-23-009
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 07-15—Filed November 8, 2012, 2:25 p.m., effective December 9, 2012]

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

Purpose: Ecology is adopting rule amendments to chapter 173-351 WAC, Criteria for municipal solid waste landfills. In 2004 the Environmental Protection Agency (EPA) amended the federal rule (40 C.F.R. Part 258) to allow municipal solid waste landfills (MSWLF) to obtain research, development and demonstration (RD&D) permits for new and existing landfills and lateral expansions. Ecology is adopting rule language to allow use of innovative or new technologies for run-on control systems, liquid restrictions and final cover requirements. The amended rule will allow facilities, with concurrence from the local health jurisdictions and the state solid waste program, to take advantage of these RD&D permits provided that MSWLF owners/operators demonstrate that compliance with the permit will not increase risk to human health and the environment.

Currently, we have partial approval from EPA for our MSWLF rule. By incorporating the recent RD&D and other federal amendments into chapter 173-351 WAC, we anticipate achieving full approval of our state program from EPA.

Rule changes include:

- Adoption of new federal regulations which allow for issuance of RD&D permits.
- Elimination of equivalent and arid liner designs and greater flexibility for alternate liner designs consistent with federal regulations.
- Elimination of arid closure cover design criteria.
- Adoption of new post-closure care period standards, which are based on potential risk to human and environmental receptors.
- Addition of a requirement to file an environmental covenant at closure in accordance with chapter 64.70 RCW, Uniform Environmental Covenants Act.
- Inclusion of prevailing wage law provisions for financial assurance for closure.
- Changing dissolved metals groundwater monitoring parameters to total metals.
- General "housekeeping" issues such as clarification of definitions, formatting changes and ensuring that the rule is consistent with chapter 173-350 WAC, Solid waste handling standards.

Citation of Existing Rules Affected by this Order: Amending all sections in the chapter except WAC 173-351-120; WAC 173-351-010, 173-351-100, 173-351-130, 173-351-140, 173-351-200, 173-351-210, 173-351-220, 173-351-300, 173-351-400, 173-351-405, 173-351-410, 173-351-415, 173-351-420, 173-351-430, 173-351-440, 173-351-450, 173-351-460, 173-351-465, 173-351-480, 173-351-490, 173-351-500, 173-351-600, 173-351-700, 173-351-720, 173-351-730, 173-351-740, 173-351-750, 173-351-760, and 173-351-990; and new section WAC 173-351-710.

Statutory Authority for Adoption: RCW 70.95.020(3), 70.95.060(1), 70.95.260 (1), (6).

Adopted under notice filed as WSR 12-11-097 on May 21, 2012.

Changes Other than Editing from Proposed to Adopted Version: There are some differences between the proposed rule filed on May 21, 2012, and the adopted version. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The changes and ecology's reasons for making them are summarized below.

1. Multiple locations: Inserted "or through the permit modification process of WAC 173-351-720(5)."

Reason: Comments received requested provisions for making changes to plans, other documents, and permit provisions using a more flexible process. The change made in many locations in the rule allows owners or operators to use the permit modification process to seek changes.

2. WAC 173-351-010: Inserted text under the effective dates.

Reason: Changes were made under groundwater monitoring and post-closure requirements which included specific effective dates.

3. WAC 173-351-100: Changed the definition of "modification."

Reason: Comments received requested provisions for making changes to plans, other documents, and permit provisions using a more flexible process. The change in the definition allows owners or operators to use the permit modification process to seek changes.

4. WAC 173-351-130 (2)(b): Changed requirements for when an owner or operator must notify the Federal Aviation Authority.

Reason: Ecology reviewed 49 U.S.C. § 44718 and the Federal Aviation Administration's Advisory Circular Number 150/5200-33A in response to comments and agrees that the six-mile notification would only apply to new landfill units.

5. WAC 173-351-200 (11)(b)(ix): Revised annual reporting requirements for financial assurance.

Reason: The reporting requirements were made to reflect changes for financial assurance in WAC 173-351-600.

6. WAC 173-351-400: Deleted the note at the end of the section.

Reason: The note required groundwater sampling to be performed by or under the direct supervision of a geologist or other licensed professional. Chapter 18.220 RCW, Geologists, and chapter 308-15 WAC, Geologic licensing services, establish the licensing requirements for persons practicing geology. The law is administered by geologist licensing board at the Washington state department of licensing. Ecology does not want to include provisions that may be in conflict with the jurisdictional agency.

7. WAC 173-351-410(3): Deleted requirements to report groundwater data in printed electronic report form.

Reason: The proposed rule required groundwater data to be reported in multiple forms. Ecology eliminated the requirement to submit groundwater data in both a printed and electronic report form (i.e. spreadsheet) to simplify the process. Ecology will specify that groundwater data be submitted through the department's environmental information management database.

8. WAC 173-351-430(2): Inserted provisions for developing groundwater background data for MSWLF unit transitioning from dissolved metals sampling and analysis to total metals.

Reason: This rule changes the manner in which groundwater samples are sampled and analyzed for metal constituents. Existing landfills have accumulated historical data for dissolved metals for the purpose of establishing background conditions. The change provides a method for existing facilities to establish background concentrations for total metals.

9. WAC 173-351-440(2): Inserted provisions for developing groundwater background data for MSWLF unit transitioning from dissolved metals sampling and analysis to total metals.

Reason: This rule changes the manner in which groundwater is sampled and analyzed for metal constituents. Existing landfills under assessment monitoring have accumulated historical data for dissolved metals for the purpose of establishing background conditions. The change provides a method for existing facilities to establish background concentrations for total metals.

10. WAC 173-351-500 (1)(a)(ii): Changed requirements for alternative final cover system designs.

Reasons: The alternative final cover design, having equivalent performance to the composite layer cover system, specified in the proposed rule was unintentional. Ecology understands that incorporating a geomembrane into the final cover design is not always necessary to prevent excess infiltration or exposure of waste from erosion. The adopted rule provides for alternative final cover designs having equivalent performance to the cover systems specified for arid areas in the earlier version of the rule.

11. WAC 173-351-500 (2)(c): Inserted a one year effective date for updating post-closure plans to incorporate changes to requirements.

Reason: Owners or operators of existing MSWLF units are required to modify their post-closure plans to incorporate new functional stability criteria and environmental covenants. The change provides a one year period to update the plans.

12. WAC 173-351-600 (2)(a)(v), (3)(a)(v), and (4)(a)(iv): Deleted requirement to annually submit findings of reviews performed to determine if cost estimates require adjustment for inflation.

Reasons: In response to comments, ecology deleted the proposed sections, eliminating the requirement to annually submit findings of reviews performed to determine if cost estimates require adjustment for inflation. Owners or operators must still ensure cost estimates, and associated financial assurance mechanisms, are kept current.

13. WAC 173-351-600 (5)(a)(ii): Inserted additional financial assurance mechanisms for municipal corporations.

Reasons: The additional financial assurance mechanisms were added to provide municipal corporations the same options that are available to private companies.

14. WAC 173-351-990 Appendix II: Changed iron and manganese sampling and analysis from total metals to dissolved metals.

Reasons: Iron and manganese are evaluated as geochemical indicator parameters using cation/anion balance calculations. Total metal values would include contributions from particulate matter which would skew dissolved ion values.

A final cost-benefit analysis is available by contacting Michelle Payne, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6129, fax (360) 407-6102, e-mail michelle.payne@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 1, Amended 9, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 7, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 29, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 22, 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 29, Repealed 0.

Date Adopted: November 7, 2012.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-010 Purpose, applicability, and effective dates. (1) Purpose. The purpose of this regulation is to establish minimum statewide standards for all municipal solid waste landfill (MSWLF) units under the authority of chapter 70.95 RCW as amended in order that jurisdictional health departments can enact ordinances equally as or more stringent than this regulation and to have jurisdictional health departments implement such ordinances through a permit system set forth in ((~~Section 700~~)) WAC 173-351-700. It is also the purpose of this regulation to implement rule making by the U.S. Environmental Protection Agency (EPA) under the authority of subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended in 1984, and under the authority of Section 405(d) of the Clean Water Act as amended. The Clean Water Act required EPA "to establish standards for sewage sludge that is co-disposed with municipal solid waste." EPA satisfied both statutory requirements with the publication of 40 C.F.R. Part 258-Criteria For Municipal Solid Waste Landfills on October 9, 1991. These minimum statewide criteria ensure the protection of human health and the environment.

(2) Applicability.

(a) These criteria apply to new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in this regulation((~~:~~)). All other solid waste disposal facilities and practices that are not regulated under subtitle C of RCRA and chapter 70.105 RCW are subject to the criteria contained in 40 C.F.R. Part 257, Criteria For Classification of Solid Waste Disposal Facilities, chapter 173-350 WAC, and/or chapter 173-304 WAC as amended.

Note: These rules do not apply to facilities that receive only inert ((~~and~~)) waste, demolition waste, wood waste, industrial solid wastes, or other types of solid waste (other than household waste) disposed of in ((~~limited purpose~~)) land-

fills regulated in chapter ((~~173-304~~)) 173-350 WAC, ((~~minimum functional standards for~~)) Solid waste handling standards. Co-disposal of any solid waste with household waste is governed by these rules.

(b) These criteria do not apply to MSWLF units that do not receive waste on or after ((~~the effective date of this chapter~~)) November 26, 1993. MSWLF units that stopped receiving waste prior to October 9, 1991, are subject to closure and post-closure rules under chapter 173-304 WAC, the Minimum Functional Standards for Solid Waste Handling. MSWLF units that received waste on and after October 9, 1991, but stop receiving waste prior to ((~~the effective date of this rule~~)) November 26, 1993:

(i) Are also subject to federal closure rules under 40 C.F.R. Part 258.60(a);

(ii) Will be subject to all the requirements of this regulation unless otherwise specified, if such MSWLF units fail to meet the federal closure rules under 40 C.F.R. Part 258.60(a) by April 9, 1994, and the closure standards of chapter 173-304 WAC; except that jurisdictional health departments may grant time extensions to complete closure under 40 C.F.R. Part 258.60(a) by October 9, 1994; and

(iii) Will be subject to the groundwater monitoring and ((~~corrective~~)) remedial action requirements of WAC 173-351-400 and the permitting requirements of WAC 173-351-700 if such MSWLF units are part of a multiunit groundwater monitoring system of WAC 173-351-450(4).

(3) Effective dates.

((~~(c)~~)) (a) All MSWLF units that receive waste on or after ((~~the effective date of this chapter~~)) November 26, 1993, must comply with this chapter by ((~~the effective date of this chapter~~)) November 26, 1993, unless:

(i) Later effective dates are specified elsewhere in this chapter, such as WAC 173-351-400 (1)(b), groundwater monitoring ((~~and WAC 173-351-600 (4)(c)~~)), WAC 173-351-430 (2)(b), detection monitoring program, WAC 173-351-440(2), assessment monitoring, and WAC 173-351-500 (2)(c), closure and post-closure care; or

(ii) The MSWLF unit is an existing MSWLF unit or an existing lateral expansion of an existing unit that:

(A) Disposed of 100 tons per day or less of solid waste during a representative period prior to ((~~the effective date of this chapter~~)) November 26, 1993;

(B) Does not dispose of more than an average of 100 tons per day of solid waste each month between ((~~the effective date of this chapter~~)) November 26, 1993, and April 9, 1994; and

(C) Is not on the National Priorities List (NPL) as found in Appendix B to 40 C.F.R. Part 300.

((~~(d)~~)) (b) MSWLF units that meet conditions of ((~~(c)~~)) (a)(ii) of this subsection are exempt from all requirements of this rule but must meet the final cover requirement specified in 40 C.F.R. 258.60(a) and the requirements of chapter 173-304 WAC. The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in ((~~(c) and (d)~~)) (a)(ii) of this ((~~section~~)) subsection that fail to complete cover installation by October 9, 1994, will be subject to all requirements of this chapter, unless otherwise specified.

((~~(e)~~)) (c) MSWLF units failing to satisfy these criteria are considered open dumps for purposes of state solid waste management planning under RCRA.

((~~(f)~~)) (d) MSWLF units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.

((~~(g)~~)) (e) MSWLF units containing sewage sludge and failing to satisfy these criteria violate Sections 309 and 405(e) of the Federal Clean Water Act.

Note: All state codes standards, rules and regulations cited in this chapter are available by writing to the Department of Ecology, P.O. Box 4-7600, Olympia, Washington 98504-7600, or call 1-800-RECYCLE for the location of the nearest regional office of the department.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-100 Definitions. Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this regulation; additional definitions appear in the specific sections to which they apply.

"Active area" means that part of a facility that includes the active portion and portions of a facility that recycle, store, treat, or dispose of solid (including liquid) wastes. The active area includes leachate treatment facilities and runoff ponds. It excludes run-on ponds and on-site roads which are used for any purpose; on-site roads are considered part of the buffer zone. See active portion and buffer zone definition below.

"Active life" means the period ((~~of operation~~)) beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with WAC 173-351-500(1), Closure ((~~and post-closure care~~)) criteria.

"Active portion" means that part of a facility or MSWLF unit that has received or is receiving wastes and that has not been closed in accordance with WAC 173-351-500(1), Closure ((~~and post-closure care~~)) criteria.

"Airport((~~-~~))" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities. See WAC 173-351-130 (2)(d)(i).

"Areas susceptible to mass movement((~~-~~))" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall. See WAC 173-351-130 (7)(b)(iv).

((~~"Arid" means locations in the state of Washington having less than twelve inches (30 centimeters) of precipitation annually.~~))

"Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under chapter 70.95J RCW. Biosolids includes septic tank sludge, also known as septage, that can

be beneficially recycled and meets all requirements of chapter 70.95J RCW.

"Bird hazard((-))" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants. See WAC 173-351-130 (2)(d)(ii).

"Buffer zone" means that part of a facility which lies between the active area and the property boundary.

"Channel migration zone" means the lateral extent of likely movement of a stream or river channel along a stream reach.

"Cleanup action plan" means the document that selects the cleanup action and specifies cleanup standards and other requirements for the cleanup action. These include:

• A final cleanup action plan issued by the department (or a record of decision prepared under the federal cleanup law) meeting the requirements of WAC 173-340-380;

• Cleanup action plans developed by the owner or operator of a MSWLF unit in accordance with the procedures in WAC 173-340-350 through 173-340-390 for independent remedial actions; and

• Plans developed for interim actions conducted under WAC 173-340-430.

"Closure" means those actions taken by the owner or operator of a MSWLF unit or facility to cease disposal operations and to ensure that a MSWLF unit or facility is closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period. Closure is considered part of operation. See definition of operation.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Composite layer." See WAC 173-351-500 (1)(a)(i)(B).

"Composite liner." See WAC 173-351-300 (((~~(2)(a)(ii)~~))) (3).

"Construction quality assurance" means a planned system of activities that provide assurance that a facility is constructed as specified in the design and that the materials used in construction are manufactured according to specifications. Construction quality assurance includes inspections, verifications, audits, and evaluations of materials and workmanship necessary to determine and document the quality of the constructed facility.

"Construction quality control" means a planned system of activities that is used to directly monitor and control the quality of a construction project. Construction quality controls are the measures under taken by the contractor or installer to determine compliance with requirements for workmanship and materials put forth in the plans and specification for the construction project.

((~~"Contaminate" means to allow to discharge a substance into groundwater that would cause:~~

~~The concentration of that substance in the groundwater to exceed the maximum contamination level specified in chapter 173-200 WAC; or~~

~~A statistically significant increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in chapter 173-200 WAC; or~~

~~A statistically significant increase above background in the concentration of a substance which:~~

~~Is not specified in chapter 173-200 WAC; and~~

~~Is present in the solid waste; and~~

~~Has been determined to present a substantial risk to human health or the environment in the concentrations found at the point of compliance by the jurisdictional health department in consultation with the department and the department of health.~~

~~"Dangerous wastes" means any solid waste designated as dangerous waste under chapter 173-303 WAC, the Dangerous waste regulations.~~

~~"Demolition waste" means solid waste, largely inert waste resulting from the demolition or razing of buildings, roads and other man-made structures.~~)) "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

"Contaminated" or "contamination" means the alteration of the physical, chemical, biological, or radiological properties of soil or waters of the state such that the soil or water could pose a threat to human health or the environment or the alteration is a violation of any applicable environmental regulation.

"Demonstration" means a showing by the owner or operator that human health and the environment can be protected as equally as a given requirement in the regulation. A demonstration is made in the application for a permit under WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6). A successful demonstration allows or authorizes an activity authorized for the life of the facility unless an alternative time period is approved by the jurisdictional health department.

"Department" means the department of ecology.

"Disease vectors((-))" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans. See WAC 173-351-200 (3)(b).

"Displacement((-))" means the relative movement of any two sides of a fault measured in any direction. See WAC 173-351-130 (5)(b)(ii).

"Disposal" or "deposition" means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

"Establish" means to construct a new or laterally expanded MSWLF unit.

"Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in WAC 173-351-010 (((~~(2)(c)~~))) (3)(a). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good waste management practices, including operating plans approved under chapter 173-304 WAC. ((~~For the purposes of this rule, any existing horizontal expansion approved by the jurisdictional health department for which as-built plans documenting construction prior to the effective date of this chapter, have been prepared and submitted to the jurisdictional health department shall be considered an existing MSWLF unit.~~))

"Fault((-))" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side. See WAC 173-351-130 (5)(b)(i).

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Flood plain((-))" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood. See WAC 173-351-130 (3)(b)(i).

"Free liquids((-))" means any portion of material passing through and dropping from a filter as determined by Method 9095B (Paint Filter Liquids Test), in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846. See WAC 173-351-200(9).

"Gas condensate((-))" means the liquid generated as a result of gas recovery processes at the MSWLF unit. See WAC 173-351-200 (9)(c)(ii).

"Groundwater" means water below the land surface in a zone of saturation.

"Holocene((-))" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. See WAC 173-351-130 (5)(b)(iii).

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including household hazardous waste) (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). This term does not include commercial, industrial, inert and demolition waste, or wood waste.

Note: Sanitary waste in septic tanks that is not disposed of in a MSWLF unit is subject to other state and federal rules.

"Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

Note: 'Hydraulically connected' denotes water-bearing units which can transmit water to other transmissive units.

"Inert waste" means ((~~noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack and chemical attack from acidic rain water~~)) solid waste identified as inert waste in chapter 173-350 WAC, Solid waste handling standards.

"Industrial solid wastes" means solid waste or waste by-products generated by manufacturing or industrial processes such as scraps, trimmings, packing, pallets, and other discarded materials not otherwise designated as dangerous waste under chapter 173-303 WAC, the Dangerous waste regulations. This term does not include commercial, inert, demolition, construction, woodwaste, mining waste, or oil and gas waste but does include lunch room, office, or other similar waste generated by employees at the industrial facility.

"Jurisdictional health department" means city, county, city-county, or district public health department as defined in chapters 70.05, 70.08, and 70.46 RCW.

"Landfill." See "Facility."

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit that is not an existing horizontal expansion. (See also definition of "existing MSWLF unit.")

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Lithified earth material((-))" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface. See WAC 173-351-200 (6)(b)(iii).

"Liquid waste((-))" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846. See WAC 173-351-200 (9)(c)(i).

"Lower explosive limit((-))" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees C and atmospheric pressure. See WAC 173-351-200 (4)(d).

"Maximum horizontal acceleration in lithified earth material((-))" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment. See WAC 173-351-200 (6)(b)(ii).

"Modification" means a substantial change in the design or operational plans including removal of a design element of a MSWLF unit previously set forth in a permit application or a disposal or processing activity that is not approved in the permit. To be considered a substantial change, a modification must be reasonably related to a specific requirement of this rule. A substantial change includes any change in the design, operation, closure, post-closure, financial assurance, environmental monitoring or other aspect of an MSWLF unit that is reasonably related to a specific requirement of this rule and was not previously set forth in a permit application or approved in the permit. Lateral expansions, a fifty percent increase or greater in design volume capacity or changes resulting in significant adverse environmental impacts that have ((~~lead~~)) led a responsible official to issue a declaration of significance under WAC 197-11-736 ((~~shall~~)) are not ((~~be~~)) considered a modification but ((~~would~~)) require permit reissuance under these rules.

"Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. For the purposes of this rule sewage sludge generated from publicly owned

leachate waste treatment works that receive sewage from on-site sanitary facilities ((~~shall~~)) are not ((~~be considered to be~~)) municipal sewage sludge.

"Municipal solid waste landfill unit (MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application ((~~unit~~)) site, surface impoundment, injection well, or ((~~waste~~)) pile, as those terms are defined under chapter ((~~173-304~~)) 173-350 WAC, ((~~the Minimum functional standards for~~)) Solid waste handling standards or chapter 173-218 WAC, Underground injection control program. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally-exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

"Natural background" means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to ((~~the effective date of this regulation.~~

~~"Nonarid" means locations in the state of Washington having equal to or more than twelve inches (30 centimeters) of precipitation annually~~)) November 26, 1993.

"Nuisance" means unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures, or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

"100-year flood((~~-~~))" or "base flood" means a flood that has a one percent or less chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in one hundred years on the average over a significantly long period. See WAC 173-351-130 (3)(b)(ii).

"Open burning" means the combustion of solid waste without:

Control of combustion air to maintain adequate temperature for efficient combustion;

Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and

Control of the emission of the combustion products.

"Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

"Operation" means those actions taken by an owner or operator of a facility or MSWLF unit beginning with waste acceptance at a facility or MSWLF unit up to and including closure of the facility or MSWLF unit.

"Owner" means the person(s) who owns a facility or part of a facility.

"Point of compliance." ((~~means the point located on land owned by the owner of the MSWLF unit, and is no more than one hundred fifty meters (four hundred ninety-two feet) from the waste management unit boundary; see also WAC 173-351-300 (2)(c).~~)) See WAC 173-351-300(6).

"Poor foundation conditions((~~-~~))" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a MSWLF unit. See WAC 173-351-130 (7)(b)(ii).

"Post-closure" means those actions taken by an owner or operator of a facility or MSWLF unit after closure.

"Purchase" means execution of a long term lease, securing of options to purchase or execution of agreements to purchase.

((~~"Qualified ground-water scientist." See WAC 173-351-400(2).~~))

"Random inspection." See WAC 173-351-200 (1)(b)(ii).

"Regulated dangerous waste((~~-~~))" means a solid waste that is a dangerous waste as defined in WAC 173-303-040 that is not excluded from regulation as a dangerous waste under WAC 173-303-071 or 173-303-073, or was not generated by an exempted small quantity generator as defined in WAC 173-303-070. See WAC 173-351-200 (1)(b)(i).

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the removal of materials at a disposal facility, or intermediate solid waste-handling facility, without the approval of the owner or operator and the jurisdictional health department.

"Seismic impact zone((~~-~~))" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years. See WAC 173-351-130 (6)(b)(i).

"Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sole source aquifer((~~-~~))" means an aquifer designated by the Environmental Protection Agency pursuant to Section 1424e of the Safe Drinking Water Act (PL 93-523). See WAC 173-351-140 (1)(b)(vii).

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to garbage, rubbish, ashes, industrial wastes, commercial waste, swill, sewage sludge, demolition and construction wastes,

abandoned vehicles or parts thereof, discarded commodities and recyclable materials.

"Structural components((-))" means liners, leachate collection systems, final covers, run-on/runoff systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment. See WAC 173-351-130 (7)(b)(ii).

"Unstable area((-))" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, and areas susceptible to mass movements. See WAC 173-351-130 (7)(b)(i).

"Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric, and the formation occurs above the zone of saturation.

"Vulnerability((-))" means the propensity or likelihood of a sole source aquifer to become contaminated should the integrity of the engineering control (including liners) fail; it is a measure of the propensity to deteriorate the water quality of a sole source aquifer, and takes into account an assessment of the physical barriers, the physical movement of contaminants, the hydraulic properties of the subsurface lithology; the rate of a contaminant plume movement; the physical and chemical characteristics of contaminants; and it also includes an assessment of the likelihood and ease for contaminant removal or cleanup, or the arrest of contamination, so as to not impact any further portion of the designated sole source aquifer. See WAC 173-351-140 (1)(b).

"Waste management unit" means a MSWLF unit.

"Waste management unit boundary" means a vertical surface located at the hydraulically down gradient limit of the unit. This vertical surface extends down into the hydrostratigraphic unit(s) identified in the hydrogeologic report.

"Waters of the state" means lakes, rivers, ponds, streams, inland waters, ((~~undergroundwaters~~)) underground waters, salt water, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

"Wetlands((-))" means those areas that are defined in 40 C.F.R. 232.2(r): Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas. See WAC 173-351-130 (4)(b).

((~~"Woodwaste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps.~~))

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-130 Location restrictions. (1) Applicability.

(a) On and after ((~~the effective date of this chapter~~)) November 26, 1993, all MSWLF units ((~~shall~~)) must meet the ((~~locational~~)) location restrictions of this section unless otherwise specified.

(b) Existing MSWLF units that cannot make the demonstration specified in subsection (2)(a) of this section, pertaining to airports, subsection (3)(a) of this section, pertaining to flood plains, subsection (7)(a) of this section, pertaining to unstable areas, must close by October 9, 1996, and conduct post-closure in accordance with WAC 173-351-500, Closure and post-closure care.

(c) The deadline for closure required by (b) of this subsection may be extended up to two years if the owner or operator demonstrates to the jurisdictional health department during the permitting process of WAC 173-351-700 that:

(i) There is no available alternative disposal capacity; and

(ii) There is no immediate threat to human health and the environment.

Note: Owners or operators of MSWLFs should be aware that the state department of health has adopted a state wellhead protection program in accordance with section 1428 of the Safe Drinking Water Act. Owners and operators should also be aware of ((~~locational~~)) location restrictions which may exist through the process of designating and implementing Groundwater Management Areas, under chapter 173-100 WAC, and through the Special Protection Areas of chapter 173-200 WAC.

(2) Airport safety.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and/or lateral expansions that are located within ten thousand feet (three thousand forty-eight meters) of any airport runway end used by turbojet aircraft or within five thousand feet (one thousand twenty-four meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new MSWLF units ((~~and/~~)) within a six-mile (ten kilometer) radius or lateral expansions within a five-mile (eight kilometer) radius of any airport runway end used by turbojet or piston-type aircraft must notify the effected airport and the Federal Aviation Administration (FAA) and conform to all applicable requirements.

(c) The owner or operator must place the demonstration required by (a) of this subsection in the application for a permit under WAC 173-351-700 ((~~and be issued a solid waste permit by the jurisdictional health department~~)) or through the permit modification process of WAC 173-351-720(6).

(d) For purposes of this subsection:

(i) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(ii) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(3) Flood plains.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year flood plains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the flood plain, or result in washout of solid waste so as to pose a hazard to human health and the

environment. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((~~and be issued a solid waste permit by the jurisdictional health department~~)) or through the permit modification process of WAC 173-351-720(6).

(b) For purposes of this subsection:

(i) "Flood plain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(ii) "100-year flood" or "base flood" means a flood that has a ((~~one-percent~~)) one percent or less chance of recurring in any given year or a flood of a magnitude ((~~equalled~~)) equaled or exceeded once in one hundred years on the average over a significantly long period.

(iii) "Washout" means the carrying away of solid waste by waters of the base flood.

(4) Wetlands.

(a) New MSWLF units and lateral expansions ((~~shall~~)) must not be located in wetlands, unless the owner or operator can make the following demonstrations during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6):

(i) The construction and operation of the MSWLF unit will not:

(A) Cause or contribute to violations of chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington and chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington;

(B) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Federal Clean Water Act or chapter 173-220 WAC, the National Pollutant discharge elimination system permit program;

(C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973; and

(D) Violate any requirement under the Federal Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(ii) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(A) Erosion, stability, and migration potential of native wetland soils, ((~~muds~~)) mud, and deposits used to support the MSWLF unit;

(B) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(C) The volume and chemical nature of the waste managed in the MSWLF unit;

(D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) The potential effects of catastrophic release of solid waste to the wetland and the resulting impacts on the environment; and

(F) Any additional factors, as necessary, to demonstrate during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that ecological resources in the wetland are sufficiently protected.

(iii) Where applicable under Section 404 of the Federal Clean Water Act or applicable state wetlands laws and regulations (e.g. chapter 173-22 WAC, Adoption of designations of wetlands associated with shorelines of the state), the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(iv) To the extent required under Section 404 of the Federal Clean Water Act steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by:

(A) Avoiding impacts to wetlands to the maximum extent practicable as required by (a)(iii) of this subsection;

(B) Minimizing unavoidable impacts to the maximum extent practicable; and

(C) Finally offsetting remaining unavoidable wetlands impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration and maintenance of existing degraded wetlands or creation of man-made wetlands);

(v) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this subsection, "wetlands" means those areas that are defined in 40 C.F.R. 232.2(r): Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

(5) Fault areas.

(a) New MSWLF units and lateral expansions ((~~shall~~)) must not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(b) For the purposes of this subsection:

(i) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

(6) Seismic impact zones.

(a) New MSWLF units and lateral expansions ((~~shall~~)) must not be located in seismic impact zones, unless the owner or operator demonstrates during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) to the jurisdictional health department that all containment structures, including liners, leachate col-

lection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((~~and be issued a solid waste permit by the jurisdictional health department~~)) or through the permit modification process of WAC 173-351-720(6).

(b) For the purposes of this subsection:

(i) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

(ii) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(iii) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(7) Unstable areas.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF units will not be disrupted. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((~~and be issued a solid waste permit by the jurisdictional health department~~)) or through the permit modification process of WAC 173-351-720(6). The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(i) On-site or local soil conditions that may result in significant differential settling;

(ii) On-site or local geologic or geomorphologic features; and

(iii) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this subsection:

(i) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, and areas susceptible to mass movements.

(ii) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(iii) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a MSWLF unit.

(iv) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-140 Other location restrictions. (1) Groundwater.

(((~~(a) Liner separation. No new MSWLF unit or lateral expansion shall be located at a site where the bottom of the lowest liner is any less than ten feet (three meters) above the seasonal high level of groundwater in any water bearing unit which is horizontally and vertically extensive, hydraulically recharged and volumetrically significant as to harm or endanger the integrity of the liner at any time, unless a demonstration during the permit process of WAC 173-351-700 can be made that a hydraulic gradient control system or the equivalent can be installed to control groundwater fluctuations and maintain a five foot (1.5 meter) separation between the controlled seasonal high level of groundwater in the identified water bearing unit and the bottom of the lowest liner. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department. This demonstration must include:~~

(~~(i) A hydrogeologic report required in WAC 173-351-490 including a discussion showing the effects from subsoil settlement, changes in surrounding land uses affecting groundwater levels, liner leakage or other impacts will not bring any hydrostratigraphic unit to within five feet (1.5 meters) of the bottom of the lowest liner during the active life, closure and post-closure of the MSWLF unit;~~

(~~(ii) Any currently available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;~~

(~~(iii) A showing that any gradient control discharges to groundwater will not adversely impact existing groundwater/surface water users or the instream flow of surface waters in direct hydrologic contact or continuity with the landfill's hydraulic gradient control system;~~

(~~(iv) Conceptual engineering drawings of the proposed MSWLF unit and discussion as to how the hydraulic gradient control system will not affect the structural integrity nor performance of the liner;~~

(~~(v) Design specifications for the proposed ground and surface water monitoring systems; and~~

(~~(vi) Preliminary engineering drawings of the hydraulic gradient control system (if applicable).~~

(~~(b)~~))) (a) Sole source aquifers. ((~~No~~)) New MSWLF units ((~~or~~)) and lateral expansions ((~~shall~~)) may not be located over a designated sole source aquifer unless the owner or operator

can demonstrate during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that the sole source aquifer is not vulnerable to potential groundwater contamination from the active area. Vulnerability is defined as the propensity or likelihood of a sole source aquifer to become contaminated should the integrity of the engineering control (including liners) fail; it is a measure of the propensity to deteriorate the water quality of a sole source aquifer, and takes into account an assessment of the physical barriers, the physical movement of contaminants, the hydraulic properties of the subsurface lithology; the rate of a contaminant plume movement; the physical and chemical characteristics of contaminants; and it also includes an assessment of the likelihood and ease for contaminant removal or clean-up, or the arrest of contamination, so as to not impact any further portion of the designated sole source aquifer. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((and be issued a solid waste permit by the jurisdictional health department)) or through the permit modification process of WAC 173-351-720(6). Such a vulnerability demonstration must include the submission of a hydrogeologic report as required in WAC 173-351-490 and additionally must meet the following performance criteria:

(i) Demonstrates the presence of confining units or other lithology that will prevent the migration of groundwater contamination;

(ii) Addresses the fate and transport of contaminants, including interactions in the lithologic framework, hydrogeochemical facies, contaminant travel times;

(iii) Defines and summarizes the groundwater budgets for the active area and the sole source aquifer including recharge and discharge areas and includes flow net diagrams;

(iv) Provides a contingency and groundwater assessment plan for the immediate arrest of any groundwater contamination and steps to assess the extent of contamination;

(v) Design specifications for the proposed ground and surface water monitoring systems;

(vi) Is prepared by a ((hydrogeologist or other professional groundwater scientist in accordance with WAC 173-351-400(2))) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists; and

(vii) "Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to Section 1424e of the Safe Drinking Water Act (PL 93-523).

(((c))) (b) Drinking water supply wells. ((No)) New MSWLF units ((or)) and lateral expansions active area ((shall)) may not be located closer than one thousand feet (three hundred meters) to any drinking water supply well, in use and existing at the time of the purchase of the property containing the active area unless the owner or operator can demonstrate during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that the active area is no less than a ninety-day hydraulic travel time to the nearest down-gradient drinking water supply well in the first useable aquifer. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((and be issued a solid waste permit by the jurisdictional health department)) or through the permit modification process of WAC 173-351-720(6). Such a demonstration must be prepared by a geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, and include:

(i) A hydrogeologic report required in WAC 173-351-490; and the necessary calculations for showing compliance with the ninety-day travel time; the ninety-day travel time ((shall)) must be based on the peak or full pumping capacity of installed nearby wells and include potentiometric surface maps showing well capture zones and radius of influence;

(ii) Any ((currently)) available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;

(iii) The waste management unit boundaries at facility closure; and

(iv) Design specifications for the proposed ground and surface water monitoring systems((; and

(v) A statement that the demonstration has been prepared by a hydrogeologist or qualified groundwater scientist in accordance with 173-351-400(2))).

(2) Surface water. ((No)) New MSWLF units ((or)) and lateral expansions active area ((shall)) may not be located in a channel migration zone or within two hundred feet (sixty-one meters) measured horizontally from the ordinary high water mark, of a shoreline of the state as defined in RCW 90.58.030 (which includes some wetlands associated with waters of the state), nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 246-290-450.

See also wetlands in WAC 173-351-130(4). Local wetlands protection ordinances should be consulted to determine if greater setbacks are required.

(3) Land use. ((No)) New MSWLF units ((or)) and lateral expansions ((shall)) may not be located:

(a) In areas designated by the United States Fish and Wildlife Service or the department of wildlife as critical habitat for endangered or threatened species of plants, fish, or wildlife;

(b) So that the active area is ((any)) closer than one hundred feet (thirty meters) to the facility property line for land zoned as nonresidential or ((for)) unzoned lands, ((except that the active area shall be no)) or closer than two hundred fifty feet (seventy-six meters) to the property line of adjacent land zoned as residential, existing at the time of the purchase of the property containing the active area((.));

(c) So as to be at variance with any locally-adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance; ((and)) or

(d) So that the active area is any closer than one thousand feet (three hundred meters) to any state or national park.

(4) ((Toxic air emissions. See WAC 173-351-200 (5)(a).
(5) Cover material. See WAC 173-351-200 (2)(a).
(6) Capacity. See WAC 173-351-010 (2)(c).
(7) Climatic factors. See WAC 173-351-300 (2)(b) for climatic factors.
(8) Natural soils. See WAC 173-351-300(2) for soil liner standards.)) All landfill facilities must comply with the location restrictions specified in RCW 70.95.060.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-200 Operating criteria. (1) Procedures for excluding the receipt of ((~~dangerous~~)) prohibited waste.

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of ((~~regulated dangerous~~)) prohibited wastes ((~~including polychlorinated biphenyls (PCB) waste as defined in chapter 173-303 WAC, the Dangerous waste regulations~~)). This program must include, at a minimum:

(i) Random inspections of incoming loads unless the owner or operator takes other steps (for example, instituting source controls and restricting the type of waste received) to ensure that incoming loads do not contain ((~~regulated dangerous~~)) prohibited waste ((~~or PCB wastes~~));

(ii) Records of any inspections;

(iii) Training of facility personnel to recognize ((~~regulated dangerous waste and PCB~~)) prohibited wastes; and

(iv) Immediate notification of the department and the jurisdictional health department if a ((~~regulated dangerous waste or PCB~~)) prohibited waste is discovered at the facility.

(b) For purposes of this subsection:

(i) "((~~Regulated dangerous~~)) Prohibited waste" means a solid waste that is:

(A) A dangerous waste as defined in WAC ((~~173-303-070, Designation of dangerous waste, including asbestos not managed in accordance to 40 CFR Part 61,~~)) 173-303-040 that is not excluded from regulation as a dangerous waste under WAC 173-303-071 or 173-303-073, or was not generated by an exempted small quantity generator as defined in WAC 173-303-070;

(B) Polychlorinated biphenyls (PCBs) regulated under Title 40 C.F.R. Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibition; and

(C) Asbestos not managed in accordance to 40 C.F.R. Part 61.

(ii) "Random inspection" means:

(A) Discharging a random waste load onto a suitable surface. A suitable surface ((~~shall~~)) must be chosen to avoid interference with operations so that sorted waste can be distinguished from other loads of uninspected waste, so as to avoid litter and to contain runoff;

(B) Viewing the contents prior to actual disposal of the waste; and

(C) Allowing the facility owner or operator to return excluded wastes to the hauler, arrange for disposal of excluded wastes at a facility permitted to manage ((~~dangerous~~)) prohibited waste, or take other measures to prevent disposal of the excluded wastes at the facility.

(2) Cover material requirements.

(a) Except as provided in (b) of this subsection, the owners or operators of all MSWLF units must cover disposed solid waste with six inches (fifteen centimeters) of earthen material, i.e., soils, at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness other than at least six inches (15 centimeters) of earthen material may be approved by the jurisdictional health department ((~~if the~~)). The owner or operator must demonstrate((~~s~~)) during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that the alternative material and thickness will not present a threat to human health or the environment; will not adversely affect gas or leachate composition or collection; will control disease vectors, fires, odors, blowing litter, and scavenging; and provide((~~s~~)) adequate access for heavy vehicles((~~, will not adversely affect gas or leachate composition and controls and scavenging without presenting a threat to human health and the environment~~)).

(c) The jurisdictional health department may grant a temporary waiver not to exceed three months from the requirement of (a) and (b) of this subsection if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(3) Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this subsection, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(4) Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that:

(i) The concentration of methane gas generated by the facility does not exceed twenty-five percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components);

(ii) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary or beyond; and

(iii) The concentration of methane gases does not exceed one hundred parts per million by volume of methane in offsite structures.

(b) Owners or operators of all MSWLF units must control explosive gases and implement a routine methane monitoring program to ensure that the standards of (a)(i) and (ii) of this subsection are met.

(i) The explosive gas controls and type and frequency of monitoring must be determined based on the following factors:

(A) Soil conditions;

(B) The hydrogeologic conditions surrounding the facility;

(C) The hydraulic conditions surrounding the facility; ((~~and~~))

(D) The location of facility structures and property boundaries; and

(E) The design and operation of the MSWLF unit.

(ii) The minimum frequency of monitoring ((~~shall~~)) must be quarterly.

Note: All gas monitoring wells ((~~shall~~)) must be constructed and decommissioned to ensure protection of the groundwater and to prevent groundwater contamination and follow the requirements of chapter 173-160 WAC, Minimum standards for construction and maintenance of wells, unless otherwise approved by the department and the jurisdictional health department.

(c) If methane gas levels exceeding the limits specified in subsection (4)(a)(i) or (ii) of this section are detected, the owner or operator must:

(i) Immediately take all necessary steps to ensure protection of human health including:

(A) Notifying the jurisdictional health department;

(B) Where subsection (4)(a)(ii) of this section is exceeded, monitoring of offsite structures for compliance with subsection (4)(a)(iii) of this section;

(C) Daily monitoring of methane gas levels unless otherwise authorized by the jurisdictional health department; and

(D) Evacuation of buildings affected by landfill gas ((~~shall~~)) must be determined by the jurisdictional health department and fire department.

(ii) Within seven calendar days of detection, place in the operating record, the methane gas levels detected and a description of the steps taken to protect human health; and

(iii) Within sixty days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the jurisdictional health department that the plan has been implemented. The plan ((~~shall~~)) must describe the nature and extent of the problem and the remedy.

(iv) The jurisdictional health department may establish alternative schedules for demonstrating compliance with (c)(ii) and (iii) of this subsection.

(d) For purposes of this subsection, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees C and atmospheric pressure.

(5) Air criteria.

(a) Owners or operators of all MSWLF units must ensure that the units not violate any applicable requirements developed under the Washington state implementation plan approved or promulgated by the ((~~Federal~~)) U.S. Environmental Protection Agency pursuant to Section 110 of the Federal Clean Air Act, as amended.

(b) Open burning of solid waste is prohibited at all MSWLF units, except: For the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees or debris from emergency cleanup operations, provided that such open burning is not inconsistent with policies, regulations, and permits administered by the jurisdictional air pollution control agency or the department under the Washington Clean Air Act, chapter 70.94 RCW. Household waste ((~~shall~~)) must not be open burned.

(6) Access requirements. Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic, illegal dumping of wastes, and controls to keep animals out by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate ((~~shall be~~)) is required at each entry to the facility.

(7) Run-on/runoff control systems.

(a) Except as allowed under WAC 173-351-710, owners or operators of all MSWLF units must design, construct, and maintain:

(i) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five year storm;

(ii) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm.

(b) Runoff from the active portion of the landfill unit must be handled in accordance with WAC 173-351-200(8).

(8) Surface water requirements. MSWLF units ((~~shall~~)) must not:

(a) Cause a discharge of pollutants into waters of the state, including wetlands, that violates any requirements of chapter 90.48 RCW, Water pollution control, including, but not limited to, chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington, chapter 173-220 RCW, the National pollutant discharge elimination system permit program and chapter 173-216 WAC, State waste discharge permit program.

(b) Cause the discharge of a nonpoint source of pollution to waters of the state, including wetlands, that violates any requirement of an area-wide or statewide water quality management plan that has been approved under Section 208 or 319 of the Federal Clean Water Act, as amended.

(9) Liquids restrictions.

(a) Except as allowed under WAC 173-351-710, bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

(i) The liquid waste is household waste other than septic waste; or

(ii) The liquid waste is leachate or gas condensate derived from the MSWLF unit((~~, or water added in a controlled fashion and necessary for enhancing decomposition of solid waste, as approved during the permitting process of WAC 173-351-700, whether it is a new or existing MSWLF, or lateral expansion and the MSWLF unit~~)) and:

(A) The MSWLF unit is designed with a leachate collection system and composite liner as described in WAC 173-351-300 ((~~(2)(a)(i) and (ii) or (iii)~~))(3); and

(B) ((~~Is accepting leachate, condensate or water resulting from an emergency in disposing of such liquids.~~

~~The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.~~)) The owner or operator has obtained approval during the permitting process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) prior to placing liquid waste in the MSWLF unit.

Note: Condensate and leachate are subject to designation to determine whether either is a dangerous waste under chapter 173-303 WAC.

(b) Containers holding liquid waste may not be placed in a MSWLF unit unless:

(i) The container is a small container similar in size to that normally found in household waste;

(ii) The container is designed to hold liquids for use other than storage; or

(iii) The waste is household waste.

(c) For purposes of this subsection:

(i) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846.

(ii) "Gas condensate" means the liquid generated as a result of gas recovery processes at the MSWLF unit.

(10) Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain the required information as it becomes available. The operating record must be retained at or near the facility in an operating record or in an alternative location approved by the jurisdictional health department during the permitting process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6). The required information includes:

(i) Copies of all initial, renewal, reissued, and modified permit applications including all demonstrations, and issued permits;

(ii) Inspection records, training procedures, and notification procedures required in subsection (1) of this section, Procedures for excluding the receipt of ((~~hazardous~~)) prohibited waste, and inspection documents associated with the plan of operation, WAC 173-351-210 (((~~(1)(b)~~))).

(iii) Gas monitoring results from monitoring and any remediation plans required by WAC 173-351-200(4);

(iv) Any demonstration, certification, declaration of construction, finding, monitoring, testing, or analytical data as required by WAC 173-351-400 (Groundwater monitoring systems and ((~~corrective~~)) remedial action);

(v) Major deviations from the plan of operation required in WAC 173-351-210; and

(vi) Daily records of weights or volumes of solid waste and, if available, types of waste received at the facility.

(b) The owner or operator must notify the jurisdictional health department when the documents from (a) of this subsection have been placed in or added to the operating record, unless:

(i) Such documents have been made a part of a permit application under this regulation;

(ii) Notification occurs under the renewal application requirements of WAC 173-351-730 (3)(b)(iv); or

(iii) The documents are daily records of weights or volumes specified in WAC 173-351-200 (10)(a)(vi).

(c) The jurisdictional health department can set alternative schedules during the permitting process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) for recordkeeping and notification requirements as specified in (a) and (b) of this subsection, except for the notification requirements in WAC 173-351-130 (2)(b), the Federal Aviation Administration and in WAC 173-351-440 (6)(c), notification of land owners under assessment monitoring.

(d) All information contained in the operating record must be furnished upon request to the jurisdictional health department or be made available at all reasonable times for inspection by the jurisdictional health department and the department.

(11) Annual reports. Each owner or operator ((~~shall~~)) must prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1 of each year. The annual report ((~~shall~~)) must:

(a) Include information on facility activities during the previous year;

(b) Be on forms supplied by the department; and

(c) Include the following information:

(i) Facility location;

(ii) Facility contact;

(iii) Operational and/or post-closure information;

(iv) Permit status;

(v) Compliance information;

(vi) Facility capacity information;

(vii) Information on groundwater monitoring as required in WAC 173-351-415(1) ((~~except, prior to the effective date of the groundwater monitoring requirements of WAC 173-351-400, groundwater monitoring information and existing summaries collected under groundwater monitoring systems installed according to chapter 173-304 WAC~~)).

(viii) Information on violation of ambient standards for surface water and explosive gases whose monitoring is required by chapter 173-351 WAC or performed as part of the permit issued under WAC 173-351-700; ((~~and~~))

(ix) Financial assurance audit reports in accordance with WAC 173-351-600 if applicable; and

(x) Other information as required.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-210 Plan of operation. Each owner or operator ((~~shall~~)) must develop, keep, and abide by a plan of operation approved as part of the permitting process in WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6). The plan of operation ((~~shall~~)) must describe the facilities' operation and ((~~shall~~)) must convey to site operating personnel the concept of operation intended by the designer. The plan of operation ((~~shall~~)) must be available for inspection at the request of the jurisdictional health ((~~officer~~)) department and the department. The facility must be operated in accordance with the plan of operation or the plan must be so modified with the approval of the jurisdictional health department.

Each plan of operation ((~~shall~~)) must include:

(1) How solid wastes are to be handled on-site during its active life including transportation, routine filling, grading, cover, and housekeeping;

(2) How inspections are conducted and their frequency;

(3) Actions to take if there is a fire or explosion;

(4) Actions to take for sudden releases (e.g., failure of run-off containment system);

(5) How equipment such as leachate collection and gas collection equipment are to be operated and maintained;

(6) A safety plan or procedure; ((~~and~~))

(7) How operators will meet each requirement of WAC 173-351-200 and 173-351-220; and

(8) Other such details as required by the jurisdictional health department.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-220 Additional operating criteria. All owners or operators of MSWLF units ((~~shall~~)) must operate the facility so as to:

(1) Control road dust;

Note: Operators should carefully select dust suppressants approved by the jurisdictional health departments that do not pose a threat to surface or groundwater quality.

(2) Collect scattered litter as necessary to prevent vector harborage, a fire hazard, an aesthetic nuisance, or adversely affect wildlife or its habitat;

(3) Prohibit scavenging;

(4) Landfill personnel. All landfills ((~~shall~~)) must:

(a) Ensure that at least two landfill personnel are on-site with one person at the active portion when the site is open to the public for landfills with a permitted capacity of greater than fifty thousand cubic yards per year; and

(b) Comply with the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities.

Note: The definition of operators in chapter 173-300 WAC is not the same as the definition of operator in this rule.

(5) Ensure that reserve operational equipment ((~~shall be~~)) is available to maintain and meet ((~~these standards~~)) all operating criteria;

(6) Clearly mark the active area boundaries authorized in the permit, with permanent posts or ((~~using~~)) equivalent method ((~~clearly visible for inspection purposes~~));

(7) Thoroughly compact the solid waste before succeeding layers are added except for the first lift over a liner;

(8) Maintain the monitoring system required in WAC 173-351-400, Groundwater monitoring systems and ((~~corrective~~)) remedial action, WAC 173-351-200(4), explosive gas monitoring of this regulation and any other monitoring specified in the permit issued in WAC 173-351-700((~~.~~));

(9) Require recycling.

(a) All owners and operators ((~~shall~~)) must provide the opportunity for the general public to conveniently recycle cans, bottles, paper, and other material brought to the landfill site and for which a market exists or as required according to the most recently adopted county comprehensive solid waste management plan:

(i) During the normal hours of operation; and

(ii) In facilities convenient to the public (i.e., near entrance to the gate).

(b) Owners or operators ((~~shall~~)) must conduct recycling activities in an orderly, sanitary manner and in a way that does not interfere with MSWLF operations.

(c) Owners or operators may demonstrate during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) alternative means to providing an opportunity to the general public to recycle household solid waste including other conveniently located facilities which offer recycling opportunities.

(10) Prohibiting disposal of municipal sewage sludge or biosolids in MSWLF units.

(a) The disposal of municipal sewage sludge or biosolids or any material containing municipal sewage sludge or biosolids in a MSWLF unit is prohibited unless the municipal sewage sludge or biosolids or material containing municipal sewage sludge or biosolids is not a liquid as defined in this rule, and such disposal is specifically approved as part of a valid NPDES permit, or a valid permit issued in accordance with chapter 70.95J RCW and rules promulgated under that authority.

(b) Notwithstanding WAC 173-351-220 (10)(a), the jurisdictional health department may allow disposal of municipal sewage sludge or biosolids, or any material containing municipal sewage sludge or biosolids in a landfill on a temporary basis if the jurisdictional health department determines that a potentially unhealthful circumstance exists and other management options are unavailable or would pose a threat to human health or the environment.

(c) In accordance with (b) of this subsection upon determination that a potentially unhealthful circumstance exists, the jurisdictional health department ((~~shall~~)) must notify the department in writing, of its findings and basis for its determination. In its notification, the jurisdictional health department ((~~shall~~)) must state the date on which disposal is approved to commence, any conditions, and the date after which continued disposal ((~~shall be~~)) is prohibited.

(d) For the purposes of this regulation, the use of sewage sludge or biosolids or any material containing sewage sludge or biosolids, which is subject to regulation under 40 C.F.R. Part 503 and or chapter 70.95J RCW, as daily cover or as an amendment to daily cover ((~~shall be~~)) is considered disposal.

(11) Disposal of dangerous waste prohibited. Owners or operators of landfills ((~~shall~~)) must not knowingly dispose, treat, store, or otherwise handle dangerous waste unless the requirements of the Dangerous waste regulation, chapter 173-303 WAC are met((~~.~~));

(12) Jurisdictional health department inspection of activities. In accordance with RCW 70.95.190, employees of the jurisdictional health department or their agents may enter upon, inspect, sample, and move freely about the premises of any MSWLF, after presentation of credentials.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-300 Design criteria. (1) Applicability. New MSWLF units and lateral expansions must be constructed in accordance with the requirements under subsection (2) of this section. Existing MSWLF units are not subject to this section. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management, including operating plans approved under chapter 173-304 WAC.

(2) New MSWLF units and lateral expansions ((~~shall~~)) must be constructed:

(a) ((~~For nonarid landfills, in accordance with a standard design as follows:~~

~~(i)~~)) With a composite liner as defined in ((~~(a)(ii)~~)) subsection (3) of this ((~~subsection~~)) section and a leachate collection system that is designed and constructed to maintain less than a 1 foot (30 cm) depth of leachate over the liner((~~.~~

~~Note: Leachate head in leachate pump sump areas, only, shall not be allowed to exceed two feet (60 cm).~~

~~(ii)~~)) and less than a 2-foot depth over the leachate pump sump area; or

(b) In accordance with an alternative design approved by the jurisdictional health department with the department's written consent. Alternative designs must ensure that the

concentration values listed in Table 1 of this section and the criteria in the water quality standards for groundwaters of the state of Washington, chapter 173-200 WAC, will not be exceeded in the hydrostratigraphic unit(s) identified in the hydrogeologic characterization/report at the relevant point of compliance as specified during the permitting process in WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6). Alternative designs must also sufficiently control methane to meet the criteria in WAC 173-351-200 (4)(a).

(3) For the purpose of this section, "composite liner" means a system consisting of two components; the upper component must consist of a minimum of 60 mil thickness high density polyethylene (HDPE) geomembrane. The lower component must consist of at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than $1X10^{-7}$ cm/sec. The geomembrane must be installed in direct and uniform contact with the compacted soil component. Thinner geomembranes of other than high density polyethylene may be used provided that a demonstration can be made that the alternative has equivalent mechanical strength, permeability, chemical resistance and other factors under conditions of construction and use. Minimum thickness of geomembranes other than high density polyethylene ((~~shall~~)) must be 30 mils.

(((~~(iii) Equivalent liner designs and liner materials may be used provided a demonstration during the permitting process of WAC 173-351-700 can be made that the liner is equivalent to the composite liner design:~~

~~(A) With respect to hydraulic effectiveness as shown by the use of the hydraulic evaluation of landfill performance (HELP) model or other approved models or methods;~~

~~(B) With respect to mechanical strength;~~

~~(C) With respect to chemical resistance;~~

~~(D) With respect to potential physical damage during construction and operation;~~

~~(E) With respect to attenuative capacity; and~~

~~(F) And other factors identified by the jurisdictional health department and the department on a case-by-case basis.~~

~~(b) For arid landfills, in accordance with a design that ensures that the maximum contaminant levels listed in Table 1 of this section will not be exceeded in the hydrostratigraphic unit(s) identified in the hydrogeologic characterization/report at the relevant point of compliance as specified during the permitting process in WAC 173-351-700. When approving a design that complies with the arid landfill design of (b) of this subsection, the jurisdictional health department shall consider at least the following factors:~~

~~(i) The hydrogeologic characteristics of the facility and surrounding land;~~

~~(ii) The climatic factors of the area; and~~

~~(iii) The volume, physical and chemical characteristics of the leachate.~~

~~Note: When determining the need for a liner in arid settings and its ability to meet the performance standard of this section, considering (b)(i), (ii), and (iii) of this subsection, the owner or operator may use:~~

~~(A)~~)) (4) When demonstrating that a proposed alternative design meets the standards of this section, the owner or operator may use:

(a) Existing information such as vadose zone, groundwater monitoring, or leachate characterization that has previously been conducted at the facility;

(((~~(B)~~))) (b) Contaminant transport modeling in accordance with the requirements of WAC 173-351-480; and/or

(((~~(C)~~))) (c) Other information determined as appropriate and relevant by the jurisdictional health department.

((~~(c)~~)) (5) When approving an alternative design, the jurisdictional health department must consider at least the following factors:

(a) The hydrogeologic characteristics of the facility and surrounding land;

(b) The climatic factors of the area; and

(c) The volume, physical and chemical characteristics of the leachate.

(6) The relevant point of compliance approved during the permitting process in WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6), ((~~shall~~)) must be no more than one hundred fifty meters (four hundred ninety-two feet) from the waste management unit boundary and ((~~shall~~)) must be located on land owned by the owner of the MSWLF unit. In approving the relevant point of compliance the jurisdictional health department ((~~shall~~)) must consider at least the following factors:

(((~~(i)~~))) (a) The hydrogeologic characteristics of the facility and surrounding land;

(((~~(ii)~~))) (b) The volume, and physical/chemical characteristics of the leachate;

(((~~(iii)~~))) (c) The quantity and quality, and direction((~~,~~)) of flow of groundwater;

(((~~(iv)~~))) (d) The proximity and withdrawal rate of the groundwater users;

(((~~(v)~~))) (e) The availability of alternative drinking water supplies;

(((~~(vi)~~))) (f) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or reasonably expected to be used for drinking water;

(((~~(vii)~~))) (g) Public health, safety, and welfare effects; and

(((~~(viii)~~))) (h) Practical capability of the owner or operator.

(7) Liner separation from groundwater. New MSWLF units and lateral expansions may not be designed such that the bottom of the lowest liner component is any less than ten feet (three meters) above the seasonal high level of groundwater, unless a demonstration can be made during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that a hydraulic gradient control system, or the equivalent, can be installed which prevents the controlled seasonal high level of groundwater in the identified water-bearing unit from contacting the bottom of the lowest liner component. For the purposes of this section, groundwater includes any water-bearing unit that is horizontally and vertically extensive, hydraulically recharged and volumetrically significant as to harm or endanger the integrity of the liner at any time. The owner or operator must place the demonstration in the application for a permit under

WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6). This demonstration must include:

(a) A hydrogeologic report required in WAC 173-351-490 including a discussion showing the effects from subsoil settlement, changes in surrounding land uses affecting groundwater levels, liner leakage or other impacts will not bring any hydrostratigraphic unit in contact with the bottom of the lowest liner during the active life, closure, post-closure, and upon completion of post-closure care of the MSWLF unit;

(b) Any available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;

(c) A showing that any gradient-control discharges to groundwater will not adversely impact existing groundwater/surface water users or the instream flow of surface waters in direct hydrologic contact or continuity with the landfill's hydraulic gradient control system;

(d) Conceptual engineering drawings of the proposed MSWLF unit and discussion as to how the hydraulic gradient control system will not affect the structural integrity nor performance of the liner during the active life, closure, post-closure, and upon completion of post-closure care of the MSWLF unit;

(e) Design specifications for the proposed ground and surface water monitoring systems;

(f) A discussion of the potential impacts from the gradient control system on the capability of collecting groundwater samples that represent the quality of groundwater passing the relevant point of compliance; and

(g) Preliminary engineering drawings of the hydraulic gradient control system.

TABLE 1

CHEMICAL	Maximum ((~~Contaminant Levels (MCL~~)) Concentration (mg/l)((~~)~~))
ARSENIC	0.00005
BARIUM	1.0
BENZENE	0.001
CADMIUM	((~~0.01~~)) 0.005
CARBON TETRACHLORIDE	0.0003
CHROMIUM (HEXAVALENT)	0.05
2,4-DICHLOROPHENOXY ACETIC ACID	((~~0.1~~)) 0.07
1,4-DICHLOROBENZENE	0.004
1,2-DICHLOROETHANE	0.0005
1,1 DICHLOROETHYLENE	0.007
ENDRIN	0.0002
FLUORIDE	4
LINDANE	0.00006
LEAD	((~~0.05~~)) 0.015
MERCURY	0.002

TABLE 1

CHEMICAL	Maximum ((~~Contaminant Levels (MCL~~)) Concentration (mg/l)((~~)~~))
METHOXYCHLOR	((~~0.1~~)) 0.04
NITRATE	10
SELENIUM	0.01
SILVER	0.05
TOXAPHENE	0.00008
1,1,1-TRICHLOROETHANE	0.20
TRICHLOROETHYLENE	0.003
2,4,5-TRICHLOROPHENOXY ACETIC ACID	0.01
VINYL CHLORIDE	0.00002

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-400 Groundwater monitoring systems and ((~~corrective~~)) remedial action. (1) Applicability.

(a) The requirements of WAC 173-351-400 through WAC 173-351-490 apply to MSWLF units whose owners and operators are required to perform groundwater monitoring under chapter 173-351 WAC.

(b) Owners and operators of MSWLF units must comply with the groundwater monitoring requirements of this regulation according to the following schedule:

(i) Existing MSWLF units and lateral expansions less than one mile (1.6 kilometers) from a drinking water intake (surface or subsurface) must be in compliance with the groundwater monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 by October 9, 1994;

Note: A drinking water intake is any surface water or groundwater intake that is used for the purposes of drinking water i.e., water supply wells.

(ii) Existing MSWLF units and lateral expansions greater than one mile (1.6 kilometers) from a drinking water intake (surface or subsurface) must be in compliance with the groundwater monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 by October 9, 1995;

(iii) New MSWLF units and lateral expansions ((~~units~~)) must be in compliance with the groundwater monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 before waste can be placed in the MSWLF unit.

(c) Existing MSWLF units and lateral expansions with groundwater contamination as defined under WAC 173-304-100 and chapter 173-200 WAC must begin an assessment groundwater monitoring program under WAC 173-351-440 by October 9, 1994.

(d) Interim groundwater monitoring programs. Prior to the compliance schedules in (b) of this subsection, all existing MSWLF units and lateral expansions must either:

(i) Continue to monitor under WAC 173-304-490; or

(ii) Begin to monitor under this section.

(e) All MSWLF units closed in accordance with chapter 173-304 WAC must continue to monitor groundwater in accordance with chapter 173-304 WAC.

(2) ((~~Personnel qualifications. For the purposes of this regulation, a "qualified groundwater scientist" must be a hydrogeologist, geologist, engineer, or other scientist who meets all of the following criteria:~~

~~(a) Has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and~~

~~(b) Has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.~~

~~(3) A qualified groundwater scientist is required to prepare~~)) The following reports, demonstrations and information must be prepared by a geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists:

(a) The hydrogeologic report(s) of WAC 173-351-490;

(b) The groundwater monitoring program(s) including the groundwater monitoring system design and well placement of WAC 173-351-405; the groundwater sampling and analysis plan of WAC 173-351-410; the detection monitoring program(s) of WAC 173-351-430; and the assessment monitoring program(s) of WAC 173-351-440;

(c) Any demonstration(s) under WAC 173-351-430 (4)(c) ((~~or~~)), 173-351-440 (6)(e), ((~~or~~)) 173-351-140(1), or 173-351-300(7);

(d) Any modification(s) proposals/requests to the approved groundwater monitoring program in accordance with WAC 173-351-450; ((~~and~~))

(e) Any groundwater modeling demonstrations made under WAC 173-351-480; and

(f) The groundwater reports required under WAC 173-351-415.

((~~Note: A hydrogeologist or other qualified groundwater scientist is **NOT** required for the actual groundwater sampling.~~))

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-405 Performance standards for groundwater monitoring system designs. Groundwater monitoring well placement.

The groundwater monitoring system design ((~~shall~~)) must meet the following performance criteria:

(1) A sufficient number of wells must be installed at appropriate locations and depths to yield representative groundwater samples from those hydrostratigraphic units which have been identified as the earliest target hydraulic pathways and conduits of flow for groundwater and contaminant movement, and storage.

(2) The number, spacing, and depths of monitoring wells must be based on the site characteristics including the area of the MSWLF unit and the hydrogeological characterization of WAC 173-351-490, and requires a demonstration based on all of the following information:

(a) A groundwater flow path analysis which supports why the chosen hydrostratigraphic unit best serves the installation of a detection or assessment groundwater monitoring well system capable of providing early warning detection of any groundwater contamination.

(b) Documentation and calculations of all of the following information:

(i) Hydrostratigraphic unit thicknesses including confining units and transmissive units;

(ii) Vertical and horizontal groundwater flow directions including seasonal, man-made, or other short term fluctuations in groundwater flow;

(iii) Stratigraphy and lithology;

(iv) Hydraulic conductivity; and

(v) Porosity and effective porosity.

(3) Hydraulically placed upgradient wells (background wells) must meet the following performance criteria:

(a) Must be installed in groundwater that has not been affected by leakage from a MSWLF unit; or

(b) If hydrogeologic conditions do not allow for the determination of a hydraulically placed upgradient well then sampling at other monitoring wells which provide representative background groundwater quality may be allowed((~~; and~~)).

(4) Hydraulically placed down-gradient wells (compliance wells) must meet the following performance criteria:

(a) Represent the quality of groundwater passing the relevant point of compliance specified by the jurisdictional health department. The downgradient monitoring system must be installed at the relevant point of compliance specified by the jurisdictional health department during the permitting process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6). Additional wells may be required by the jurisdictional health department based upon areal extent of the MSWLF unit, complex hydrogeologic settings or to define the extent of contamination under WAC 173-351-440 and 173-351-450.

(b) When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance hydraulically down gradient from the relevant point of compliance that ensures detection of groundwater contamination in the chosen hydrostratigraphic unit.

(5) All monitoring wells must be cased in a manner that maintains the integrity of the bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of samples. The annular space between the bore hole and well casing above the sampling depth must be sealed to prevent ((~~contamination~~)) corruption of samples and contamination of groundwater. All wells must be constructed in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of water wells and chapter 173-162 WAC, Regulation and licensing of well contractors and operators. All wells must be clearly labeled, capped, and locked.

(6) The owner or operator must apply for a permit modification under WAC 173-351-720((~~(5)~~)) (6) or must apply

during the renewal process of WAC 173-351-720 (((~~(1)(i)~~))) (5), for any proposed changes to the design, installation, development, and decommission of any monitoring wells, piezometers, and other measurement, sampling, and analytical devices. Upon completing changes, all documentation, including date of change, new well location maps, boring logs, and well diagrams must be submitted to the jurisdictional health department and must be placed in the operating record of WAC 173-351-200(10).

(7) All monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(8) The groundwater monitoring system and hydrogeologic report including any changes to the groundwater monitoring system ((~~shall~~)) must be prepared by a ((~~hydrogeologist or other qualified groundwater scientist and include a statement of personnel qualifications~~)) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists.

(9) The ((~~prepared~~)) groundwater monitoring system design and hydrogeologic report must be made a part of the permit application in accordance with WAC 173-351-730 (1)(b)(iii).

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-410 Groundwater sampling and analysis requirements. (1) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with WAC 173-351-400 and with this section. The owner or operator must submit the sampling and analysis program documentation as a part of the permit application in accordance with WAC 173-351-730 (1)(b)(iii). The program must include procedures and techniques for:

(a) Sample collection and handling;

(b) Sample preservation and shipment;

(c) Analytical procedures;

(d) Chain-of-custody control;

(e) Quality assurance and quality control;

(f) ((~~Decontamination~~)) Cleansing of drilling and sampling equipment;

(g) Procedures to ensure employee health and safety during well installation and monitoring; and

(h) Well operation and maintenance procedures.

(2) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples or reflect an acceptable practical quantitation limit (PQL). Groundwater samples ((~~shall~~)) must not be field-filtered ((~~for organic constituents~~)) prior to laboratory analysis except for geochemical indicator parameters used for cation-anion balance evaluations in WAC 173-351-430(5). All analyses must be sent to an accredited laboratory in accordance with chapter 173-50 WAC, Accreditation of environmental laboratories.

(3) Groundwater elevations must be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same MSWLF unit must be measured within a period of time short enough to avoid any groundwater fluctuations which could preclude the accurate determination of groundwater flow rate and direction. All groundwater elevations must be determined:

(a) By a method that ensures measurement to the 0.01 (one/one hundredth) of a foot (3mm) relative to the top of the well casing; and

(b) The orthometric elevation of the top of the well casing is related to a vertical benchmark based on the ((~~national geodetic~~)) North American vertical datum of ((~~1929 (NGVD 29)~~))) 1988 (NAVD88) and be established to 3rd order classification standards per federal geodetic control committee((~~, or its successor, as specified in WAC 332-130-060~~)).

(4) The owner or operator must establish background groundwater quality in hydraulically placed upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under ((~~this section~~)) WAC 173-351-430, 173-351-440, or 173-351-450. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of WAC 173-351-400 through 173-351-490.

(5) The number of samples collected to establish water quality data must be consistent with the appropriate statistical procedures determined pursuant to WAC 173-351-420. The sampling procedures ((~~shall~~)) must be those specified under WAC 173-351-430 for detection monitoring, WAC 173-351-440 for assessment monitoring, and WAC 173-351-440(((~~(6) of corrective~~)) (7) for remedial action.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-415 Groundwater reporting. (1) ((~~The annual report shall be included with the facility annual report as required in WAC 173-351-200(11) and shall be on~~)) Each owner or operator must prepare and submit a copy of an annual groundwater report to the jurisdictional health department and the department by April 1st of each year. The groundwater annual report must include completed forms developed by the department ((~~which will request~~)) and the following information:

(a) A brief summary of statistical results and/or any statistical trends including any findings of any statistical increases for the year;

(b) A brief summary of groundwater flow rate and direction for the year, noting any trends or changes;

(c) A ((~~Xerox~~)) copy of all potentiometric surface maps developed for each quarter or approved semi-annual period; and

(d) A summary geochemical evaluation noting any changes or trends in the cation-anion balances, Trilinear diagrams and general water chemistry for each well.

(2) A quarterly, or alternate frequency approved in accordance with WAC 173-351-450, groundwater report ((~~shall~~)) must be submitted to the jurisdictional health department and the department no later than sixty days after the receipt of the ((~~quarterly~~)) analytical data ((~~and shall~~)). The groundwater report must include completed forms developed by the department and all of the following:

(a) All groundwater monitoring data for the sampling period;

(b) A brief summary of statistical results and/or any statistical trends and all statistical calculations ((~~and summaries~~));

(c) Notification of any statistical increase and concentrations above ((~~MCL's~~)) the criteria in chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington;

(d) Static water level readings for each monitoring well for each sampling event;

(e) Potentiometric surface elevation maps depicting groundwater flow rate and direction;

(f) Cation-anion balances and Trilinear diagrams; and

(g) Leachate ((~~analyses~~)) analysis results if sampled and tested.

(3) All groundwater monitoring data must be submitted consistent with procedures specified by the department. Unless otherwise specified by the department, all groundwater monitoring data must be submitted in an electronic form capable of being transferred into the department's data management system.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-420 Statistical methods for groundwater monitoring. (1) The owner or operator must calculate and evaluate all of the following statistics ((~~using~~)) for background groundwater quality data:

(a) The background mean;

(b) The background variance;

(c) The standard deviation of the background data;

(d) The coefficient of variation of the background data;

(e) The standard error of the background data; and

(f) Other statistics testing for homogeneity of variance and the normality of the background data.

(2) The owner or operator must specify in the permit application in accordance with WAC 173-351-730 (1)(b)(iii) ((~~one of the following~~)) appropriate statistical methods to be used in evaluating groundwater monitoring data for each ((~~hazardous~~)) constituent. The statistical test chosen ((~~shall~~)) must be conducted separately for each ((~~hazardous~~)) constituent in each well. ((~~The statistical methods to be used are:~~

~~(a) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;~~

~~(b) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;~~

~~(c) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;~~

~~(d) A control chart approach that gives control limits for each constituent; or~~

~~(e) Another statistical test method that meets the performance standards of this section. The owner or operator must place a justification for this alternative in the permit application in accordance with WAC 173-351-730 (1)(b)(iii). The justification must demonstrate that the alternative method meets the performance standards of this section.~~

~~(3) Any statistical method chosen under this section shall comply with~~)) The owner or operator must demonstrate that the statistical methods meet the following performance standards, as appropriate:

(a) The statistical method used to evaluate groundwater monitoring data ((~~shall~~)) must be appropriate for the distribution of chemical parameters or ((~~hazardous~~)) constituents. If the distribution of the chemical parameters or ((~~hazardous~~)) constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data must be evaluated to determine if nonnormal conditions are due to laboratory or sampling error, poor well construction, seasonal or spatial variability, or actual site conditions. Transformed or a distribution-free theory test may be used, upon a determination of why nonnormal conditions exist. If the distributions for the constituents differ, more than one statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test ((~~shall~~)) must be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period ((~~shall~~)) must be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) ((~~If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated~~)) Parameter values ((~~shall~~)) must be protective of human health and the environment. The parameters ((~~shall~~)) must be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(d) ((~~If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective~~

~~of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.~~

~~(e)~~)) The statistical method ((~~shall~~)) must account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (PQL) that is used in the statistical method ((~~shall~~)) must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(((~~f~~))) (e) If necessary, the statistical method ((~~shall~~)) must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(((~~4~~))) (3) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit after each sampling event and as determined under this section.

(a) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to WAC 173-351-430 or 173-351-440 to the background value of that constituent, according to the statistical procedures and performance standards specified under this section.

(b) Within thirty days after receipt of the analytical data, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well (((~~at all hydraulically placed upgradient and downgradient wells~~))).

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-430 Detection monitoring program. (1) Detection monitoring ((~~is required~~)) must be conducted at MSWLF units at all groundwater monitoring wells ((~~defined~~)) required under WAC 173-351-405. At a minimum, a detection monitoring program must include ((~~the~~)) monitoring for the constituents listed in Appendix I and II of this regulation.

(2) Background data ((~~development~~)).

(a) Background data development for new MSWLF units.

(i) A minimum of eight independent samples ((~~shall be collected for each well (background and downgradient) and~~)) must be collected from each monitoring well and analyzed for ((~~the~~)) Appendix I constituents for the first year of groundwater monitoring unless background data already exists for Appendix I constituents and performance criteria of WAC 173-351-400 are met.

(((~~b~~))) (ii) Each independent sampling event ((~~shall~~)) must be no less than one month apart from the previous independent sampling event.

(((~~c~~))) (iii) Sampling for Appendix II parameters ((~~shall~~)) must be done quarterly.

(((~~d) MSWLF units which have previously developed background for those constituents listed in Appendix I will be waived from (a) of this subsection on a parameter by parameter basis providing all performance criteria of WAC 173-351-400 are met.~~)))

(b) Total metals background data development for existing MSWLF units.

(i) An owner or operator must follow the permit modification process in WAC 173-351-720(6) to amend the sampling and analysis program to address (b)(ii) and (iii) of this subsection by May 31, 2013. Amendments must meet the standards of WAC 173-351-410 (1) and (2).

(ii) Beginning at the first sampling event after jurisdictional health department approval of amendments to the sampling and analysis program in (b)(i) of this subsection, independent samples must be collected from each monitoring well and analyzed for the parameters in (ii)(A) and (B) of this subsection. Samples must be collected and analyzed over eight sampling periods, which may be quarterly or semiannually to coincide with routine monitoring as approved by the jurisdictional health department.

(A) Total metals from Appendix I Inorganic Constituents 1-15.

(B) Dissolved metals:
Antimony (Dissolved).
Arsenic (Dissolved).
Barium (Dissolved).
Beryllium (Dissolved).
Cadmium (Dissolved).
Chromium (Dissolved).
Cobalt (Dissolved).
Copper (Dissolved).
Lead (Dissolved).
Nickel (Dissolved).
Selenium (Dissolved).
Silver (Dissolved).
Thallium (Dissolved).
Vanadium (Dissolved).
Zinc (Dissolved).

(iii) After collecting and analyzing samples for total and dissolved metals for eight sampling periods, collection and analysis of Appendix I Inorganic Constituents 1-15 (total metals) must continue and collection and analysis of dissolved metals under (b)(ii)(B) of this subsection can cease.

(3) ((~~Foreground data development~~)) Routine sampling. Except as allowed under WAC 173-351-450, the monitoring frequency for all constituents listed in Appendix I and II ((~~shall~~)) must be quarterly in each well during the active life of the MSWLF unit including the closure and the post-closure period and begins after ((~~the first year of~~)) background data development(((~~, for all monitoring wells (upgradient and downgradient)~~))).

((~~Note: Foreground denotes the period of time following the development of the back ground data set, for all monitoring wells (upgradient and downgradient).~~))

(4) If the owner or operator determines, pursuant to WAC 173-351-420, that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I, at any monitoring well at the boundary specified under WAC 173-351-405, the owner or operator:

(a) Must, within fourteen days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and send the same notice to the jurisdictional health department and the department; and

(b) Must establish an assessment monitoring program meeting the requirements of WAC-173-351-440 within ninety days except as provided for in (c) of this subsection; or

(c) May demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be prepared by a ((~~hydrogeologist or other qualified groundwater scientist~~)) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, and approved by the jurisdictional health department and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after ninety days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in WAC 173-351-440((~~; and~~

~~(d) Must submit the assessment monitoring program to the jurisdictional health department at the end of ninety days as provided in (b) of this subsection~~)).

(5) A geochemical evaluation of Appendix II parameters ((~~shall~~)) must be conducted at each well on a quarterly basis and include all of the following methods:

(a) A cation-anion balance evaluating the difference between the cation and anion sums expressed in milliequivalents per liter((~~; if a greater than a five to ten percent difference occurs then~~)). If the following threshold limits are exceeded, the owner or operator ((~~shall~~)) must provide a summary explanation and examine whether the difference is due to a laboratory error, poor well conditions, or other ions not accounted for in natural or impacted groundwater conditions((~~;~~)). A ten percent difference threshold is used if the total cation-anion sums are less than 5.0 meq/liter ((~~then a ten percent difference threshold, may be used~~)). A five percent difference threshold is used if the total cation-anion sums are greater than or equal to 5.0 meq/liter.

(b) A plot of cations and anions for each well on a trilinear diagram, as recommended in hydrogeologic texts and/or the department guidance documents.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-440 Assessment monitoring program. (1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the Appendix I or in the alternative list approved in accordance with WAC 173-351-450, Alternative groundwater monitoring programs.

(2) Background data development for total metals must be done in accordance with WAC 173-351-430 (2)(b) for existing MSWLF units under assessment monitoring as of November 1, 2012.

(3) Within ninety days of triggering ((~~into~~)) an assessment monitoring program, and ((~~quarterly~~)) annually thereafter, the owner or operator must sample and analyze the groundwater for all constituents identified in Appendix III ((~~of this part~~)). A minimum of one sample from each ((~~downgradient~~)) well (background and downgradient) must be collected and analyzed during each sampling event. For any constituent detected in ((~~the downgradient~~)) wells as a result of the complete Appendix III analysis, a minimum of four independent samples must be collected from each well (background and downgradient) ((~~must be collected~~)) within a time period of one hundred eighty days, and analyzed to establish background for the constituents. Each independent sample ((~~shall~~)) must be collected no less than one month apart from the previous sampling event.

(((~~3~~))) (4) After obtaining the results from ((~~the~~)) initial or subsequent sampling events required in subsection (((~~2~~))) (3) of this section, the owner or operator must:

(a) Within fourteen days, notify the jurisdictional health department of the increase, identifying the Appendix III constituent(s) that have been detected and place this notice in the operating record;

(b) Within ninety days, and on a quarterly basis thereafter, resample all wells, conduct analyses for all constituents in Appendix I and II((~~,~~)) and((~~, for those~~)) constituents in Appendix III that are detected in response to subsection (((~~2~~))) (3) of this section((~~,~~)). Record their concentrations in the facility operating record and notify the jurisdictional health department. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events;

(c) Establish background concentrations for any constituents detected pursuant to subsection (((~~2~~))) (3) of this section;

(d) Establish groundwater protection standards for all constituents detected pursuant to subsection (((~~2~~))) (3) or (((~~3~~))) (4) of this section. The groundwater protection standards ((~~shall~~)) must be established in accordance with subsection (((~~7~~))) (8) of this section; and

(e) Continue performing geochemical evaluations in accordance with WAC 173-351-430(5) on a quarterly basis.

(((~~4~~))) (5) If the concentrations of all Appendix III constituents are shown to be at or below background values, using the statistical procedures in WAC 173-351-420, for two consecutive sampling events, ((~~and before returning to detection monitoring~~)) the owner or operator ((~~must~~)) may return to detection monitoring after:

(a) ((~~Notify~~)) Notifying the jurisdictional health department of this finding;

(b) ((~~Receive~~)) Receiving approval in writing from the jurisdictional health department; and

(c) ((~~Place~~)) Placing the notice and the approval in (a) and (b) of this subsection in the operating record ((~~of WAC 173-351-200(10)~~)).

(((~~5~~))) (6) If the concentrations of any Appendix III constituents are above background values, but all concentrations are below the groundwater protection standard established under subsection (((~~7~~))) (8) of this section, using the statistical procedures in WAC 173-351-420, the owner or operator

must continue assessment monitoring in accordance with this section.

(((~~(6)~~))) (7) If one or more Appendix III constituents are detected at statistically significant levels above the groundwater protection standard established under subsection (((~~(7)~~))) (8) of this section in any sampling event, the owner or operator must, within fourteen days of this finding, notify the jurisdictional health department, the department and all appropriate local government officials of the increase and place a notice in the operating record identifying the Appendix III constituents that have exceeded the groundwater protection standard. The owner or operator also:

(a) Must characterize the chemical composition of the release, the contaminant fate and transport characteristics; the rate and extent of contamination in all groundwater flow paths by installing additional monitoring wells as necessary;

(b) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subsection (((~~(2)~~))) (3) of this section;

(c) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated offsite if indicated by sampling of wells in accordance with subsection (((~~(6)~~))) (7) of this section; and

(d) Must initiate an assessment, selection, and implementation of ((~~corrective measures as required by~~)) remedial actions in accordance with chapter 173-340 WAC, the Model Toxics Control Act regulation and continue monitoring in accordance with the assessment monitoring program pursuant to this section; or

(e) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be prepared by a ((~~hydrogeologist or other qualified groundwater scientist and~~)) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, approved by the jurisdictional health department, and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the Appendix III constituents are at or below background as specified in subsection (((~~(4)~~))) (5) of this section. Until a successful demonstration is made, the owner or operator must comply with this subsection (((~~(6)~~))) (7) including initiating an assessment of ((~~corrective measures~~)) remedial actions.

(((~~(7)~~))) (8) The owner or operator:

(a) Must establish a groundwater protection standard using the groundwater quality criteria of chapter 173-200 WAC; and

(b) For constituents for which the background level is higher than the protection standard identified under (a) of this subsection, must use the background concentration for the constituents established from wells in accordance with WAC 173-351-405 through 173-351-430.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-450 Alternate groundwater monitoring programs. (1) The owner or operator may propose changes and/or alternate groundwater monitoring programs for detection monitoring after the second year of groundwater monitoring under WAC 173-351-430(3), or the assessment monitoring program of WAC 173-351-440 as follows:

(a) An alternate groundwater monitoring frequency for sampling and analysis of Appendix I and II constituents ((~~of no less than semiannual monitoring~~));

(b) A deletion of Appendix I, II, and III constituents or alternate groundwater monitoring constituents ((~~for Appendix I, II and III~~));

(c) An appropriate subset of wells to be sampled and analyzed for Appendix III under WAC 173-351-440(2).

(2) All proposed changes in groundwater monitoring frequency must be no less than semiannually for detection ((~~groundwater~~)) monitoring and no less than quarterly for assessment monitoring. The owner or operator must apply for a permit modification under WAC 173-351-720(((~~(5)~~))) (6) or must apply during the renewal process of WAC 173-351-720 (((~~(1)(i)~~))) (5) for changes in groundwater monitoring frequency making a demonstration based on the following information:

(a) A characterization of the hydrostratigraphic unit(s) including the unsaturated zone, transmissive and confining units and include all of the following:

(i) Hydraulic conductivity; and

(ii) Groundwater flow rates.

(b) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring wells (minimum distance of travel); and

(c) Contaminant fate and transport characteristics.

(3) The owner or operator must apply for a permit modification under WAC 173-351-720(((~~(5)~~))) (6) or must apply during the renewal process of WAC 173-351-720 (((~~(1)(i)~~))) (5) for all proposed deletions or changes to groundwater monitoring constituents of Appendix I, II, and III based on all of the following information:

Verification that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit, by:

(a) Leachate monitoring results consisting of those parameters listed in Appendix ((~~IV,~~)) I and II for deletions or changes to detection monitoring and Appendix III for assessment monitoring. All leachate monitoring ((~~shall~~)) must be quarterly unless otherwise approved by the jurisdictional health department and the department;

(b) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;

(c) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

(d) The detectability of indicator parameters, waste constituents, and reaction products in the groundwater; and

(e) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(4) Multiunit groundwater monitoring systems.

An owner or operator may propose during the permitting process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each MSWLF unit, including MSWLF units which were closed in accordance with chapter 173-351, 173-304, or 173-301 WAC ((~~when the facility has several MSWLF units, provided~~)). The multiunit system must meet((~~s~~)) all of the requirements of WAC 173-351-400 through WAC 173-351-490 and will be as protective of human health and environment as individual groundwater monitoring systems for each MSWLF unit. Permit approval for multiunit groundwater monitoring systems and programs will be based on the ability to provide early warning detection of any contaminant releases including:

(a) Number, spacing, and orientation of the MSWLF units;

(b) Hydrogeologic setting;

(c) Site history;

(d) Engineering design of the MSWLF units;

(e) Type of waste accepted at the MSWLF units; and

(f) Leachate analysis as referenced in subsection (3)(a) of this section for MSWLF units with leachate collection systems.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-460 Role of jurisdictional health department in ((~~corrective~~)) remedial action. The jurisdictional health department:

(1) May ((~~participate~~)) provide input to the department in ((~~all~~)) negotiations, meetings, and correspondence between the ((~~owner and operator~~)) potentially liable person(s) and the department in implementing the Model Toxics Control ((~~action~~)) Act, chapter 70.105D RCW;

(2) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a ((~~corrective~~)) remedial action program;

(3) ((~~Shall~~)) Must require the owner or operator to continue closure and post-closure activities as appropriate under these rules, after ((~~corrective~~)) remedial action measures are completed; and

(4) ((~~Shall~~)) Must continue to regulate all MSWLF units during construction, operation, closure and post-closure, that are not ((~~directly impacted by Model Toxics Control Act~~)) exempt from procedural requirements under chapter 70.105D RCW.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-465 Role of department of ecology in ((~~corrective~~)) remedial action. The department ((~~shall~~)) will carry out all the responsibilities assigned to it under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, during the ((~~corrective~~)) remedial action process.

((~~Note: Ecology encourages and will support owners or operators who perform independent corrective action(s) consistent with MTCA.~~))

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-480 Groundwater modeling. All groundwater and contaminant fate and transport modeling must meet the following performance standards:

(1) The model ((~~shall~~)) must have supporting documentation that establishes its ability to represent groundwater flow and contaminant transport and any history of previous applications;

(2) The set of equations representing groundwater movement and contaminant transport must be theoretically sound and well documented;

(3) The numerical solution methods must be based upon sound mathematical principles and be supported by verification and checking techniques;

(4) The model must be calibrated and verified against site-specific field data;

(5) A sensitivity analysis ((~~shall~~)) must be conducted to measure the model's responses to changes in the values assigned to major parameters, specified tolerances, and numerically assigned space and time discretizations;

(6) Mass balance calculations on selected elements in the model ((~~shall~~)) must be performed to verify physical validity. Where the model does not prescribe the amount of mass entering the system as a boundary condition, this step may be ignored;

(7) The values of the model's parameters requiring site specific data ((~~shall~~)) must be based upon actual field or laboratory measurements; and

(8) The values of the model's parameters which do not require site specific data ((~~shall~~)) must be supported by laboratory test results or equivalent methods documenting the validity of the chosen parameter values.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-490 The hydrogeologic report contents. (1) The hydrogeologic report ((~~shall~~)) must meet all of the following performance standards as follows:

(a) Examine existing site conditions for compliance with groundwater and surface water location restrictions under WAC 173-351-130 ((~~and~~)), 173-351-140, and 173-351-300(7);

(b) Determine existing or background groundwater quality conditions, including any groundwater contamination; and

(c) Define a detection groundwater monitoring program capable of immediate and early warning detection for potential contamination as required in WAC 173-351-400 and the information required in subsection (2) of this section.

(2) The hydrogeologic report contents ((~~shall~~)) must include the following information:

(a) A summary of local and regional geology and hydrology, including faults, zones of joint concentrations, unstable slopes and subsidence areas on site; areas of groundwater recharge and discharge; stratigraphy; erosional and depositional environments and facies interpretation(s);

(b) A borehole program which identifies all performance criteria of WAC 173-351-405 including lithology, soil/bed-

rock types and properties, preferential groundwater flow paths or zones of higher hydraulic conductivity, the presence of confining unit(s) and geologic features such as fault zones, cross-cutting structures etc., and the target hydrostratigraphic unit(s) to be monitored. The borehole program must meet the following standards:

(i) A minimum of twenty subsurface borings is required for MSWLF sites which are 50 acres or less in aerial extent. For sites greater than fifty acres, twenty borings, plus three borings for each additional ten acres thereafter, is required. Soil borings ((~~shall~~)) must be established in a grid pattern with a boring in each major geomorphic feature such as topographic divides and lowlands;

(ii) Each boring will be of sufficient depth below the proposed grade of the bottom liner as to identify soil, bedrock and hydrostratigraphic unit(s) conditions as required in WAC 173-351-405((~~.~~));

(iii) The jurisdictional health department ((~~and~~)), with the written concurrence of the department, may approve alternate methods including geophysical techniques, either surface or downhole including electric logging, ((~~some~~)) sonic logging, nuclear logging, seismic profiling, electromagnetic profiling and resistivity profiling in lieu of some of the number of borings required in the subsurface borehole program of (b)(i) of this subsection, provided sufficient hydrogeological site characterization can be accomplished and prior approval is obtained((~~.~~));

(iv) ((~~At~~)) Each boring sample((~~s shall~~)) must be collected from each lithologic unit and tested for all of the following:

(A) Particle size distribution by both sieve and hydrometer analyses in accordance with approved ASTM methods (D422 and D1120);

(B) Atterburg limits following approved ASTM methods (D4318); and

(C) Classification under the unified soil classification system, following ASTM standard D2487-85.

((~~(iv)~~)) (v) Each lithologic unit on site will be analyzed for:

(A) Moisture content, following approved ASTM methods (D2216); and

(B) Hydraulic conductivity by an in-situ field method or laboratory method approved by the jurisdictional health department and the department. All samples collected for the determination of permeability ((~~shall~~)) must be collected by standard ASTM procedures.

((~~(v)~~)) (vi) All boring logs ((~~shall~~)) must be submitted with the following information:

(A) Soil and rock descriptions and classifications;

(B) Method of sampling;

(C) Sample depth;

(D) Date of boring;

(E) Water level measurements;

(F) Soil test data;

(G) Boring location; and

(H) Standard penetration number of ASTM standard D1586-67.

((~~(vi)~~)) (vii) All borings not converted to monitoring wells or piezometers ((~~shall~~)) must be carefully backfilled, plugged and recorded in accordance with WAC 173-160-420((~~.~~));

((~~(vii)~~)) (viii) During the borehole drilling program, any on-site drilling and lithologic unit identification must be performed by a ((~~hydrogeologist,~~)) geologist or other ((~~qualified groundwater scientist~~)) licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, who is trained to sample and identify soils and bedrock lithology.

(c) Depths to groundwater and hydrostratigraphic unit(s) including transmissive and confining units;

(d) Potentiometric surface elevations and contour maps; direction and rate of horizontal and vertical groundwater flow;

(e) A description of regional groundwater trends including vertical and horizontal flow directions and rates;

(f) All elevations and top of well casings ((~~shall~~)) must be related to the ((~~national geodetic~~)) North American vertical datum of ((~~1929 (NGVD 29)~~)) 1988 (NAVD88) and the horizontal datum ((~~shall~~)) must be in accordance with chapter 58.20 RCW, Washington Coordinate System and as amended per chapter 332-130 WAC((~~.~~));

(g) Quantity, location, and construction (where available) of private and public wells within a two thousand foot (six hundred ten meter) radius of site;

(h) Tabulation of all water rights for groundwater and surface water within a two thousand foot (six hundred ten meter) radius of the site;

(i) Identification and description of all surface waters within a one-mile (1.6 kilometer) radius of the site;

(j) A summary of all previously collected groundwater and surface water analytical data, and for expanded facilities, identification of impacts ((~~of~~)) from the existing facility ((~~of the applicant to date upon~~)) on ground and surface waters ((~~from landfill leachate discharges~~));

(k) Calculation of a site water balance;

(l) Conceptual design of a groundwater and surface water monitoring system, including proposed installation methods for ((~~these~~)) all devices and well construction diagrams, and where applicable a vadose zone monitoring plan((~~, including well construction diagrams~~));

(m) Land use in the area, including nearby residences; ((~~and~~))

(n) A topographic map of the site and drainage patterns; an outline of the waste management area and MSWLF units, property boundary, the proposed location of groundwater monitoring wells; and

(o) Geologic cross-sections.

(3) Groundwater flow path analysis. The hydrogeologic report ((~~shall~~)) must include a summary groundwater flow path analysis which includes all supportive documentation, and calculations of the performance criteria of WAC 173-351-405.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-500 Closure and post-closure care. (1) Closure criteria.

(a) ((~~Nonarid areas.~~)) Owners or operators of all MSWLF ((~~units located in areas having mean annual precipitation of equal to or greater than twelve inches,~~)) must install a final cover system that is designed to minimize infiltration and erosion.

(i) The final cover system must be designed and constructed to:

(A) Have a permeability less than or equal to the permeability of any bottom liner system and natural subsoils present, and minimize infiltration through the closed MSWLF by the use of an anti-infiltration layer that contains a composite layer as defined in (a)(i)(B) of this subsection;

(B) For the purpose of this section, "composite layer" means a system consisting of two components; the upper component must consist of a minimum of 30 mil (0.76 mm) thickness of geomembrane (60 mils (1.5 mm) for high density polyethylene geomembranes). The lower component must consist of at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than $1X10^{-5}$ cm/sec. The geomembrane must be installed in direct and uniform contact with the compacted soil component;

(C) Minimize erosion of the final cover by use of an anti-erosion layer that contains a minimum of a one-foot (30 cm) layer of earthen material of which at least six inches (15 cm) of the uppermost layer is capable of sustaining native plant growth; and

(D) Address anticipated settlement (with a goal of achieving no less than two to five percent slopes after settlement), drainage and/or the need for drainage layers, gas generation and/or the need for gas layers, freeze-thaw, desiccation and stability and mechanical strength of the design.

(ii) The jurisdictional health department, with the written concurrence of the department, may approve an alternative final cover design equivalent to that specified in (a)(i) of this subsection that includes:

(A) An anti-infiltration layer that has a permeability less than or equal to the permeability of any bottom liner system and natural subsoils present, and achieves an equivalent reduction in infiltration as ((~~the~~)) an anti-infiltration layer ((~~specified in (a)(i)(A) and (B) of this subsection~~)) with a permeability no greater than $1x10^{-5}$ cm/sec containing at least two feet (60 cm) of earthen material;

(B) An anti-erosion layer that provides equivalent protection from wind and water erosion as ((~~the anti-erosion layer specified in (a)(i)(C) of this subsection~~)) a layer that contains a minimum of one foot (30 cm) of earthen material of which at least six inches (15 cm) of the uppermost layer is capable of sustaining native plant growth; and

(C) The additional design features of (a)(i)(D) of this subsection.

(b) ((~~Arid areas. Owners or operators of all MSWLF units located in arid areas must install a final cover system that is designed to minimize infiltration and erosion.~~

~~(i) The final cover system must be designed and constructed to:~~

~~(A) Minimize infiltration through the closed MSWLF by the use of an anti-infiltration layer that contains at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than $1X10^{-5}$ cm/sec;~~

~~(B) Minimize erosion of the final cover by use of an anti-erosion layer that contains a minimum of one-foot (30 cm) layer of earthen material of which at least six inches (15 cm) of the uppermost layer is capable of sustaining native plant growth; and~~

~~(C) Address anticipated settlement (with a goal of reaching two to five percent slopes after settlement), drainage and/or the need for drainage layers, gas generation and/or the need for gas layers, freeze-thaw, desiccation and stability and mechanical strength of the design.~~

~~(ii) The jurisdictional health department may approve an alternative final cover design to that specified in (b)(i) of this subsection that includes:~~

~~(A) An anti-infiltration layer that achieves an equivalent reduction in infiltration as the anti-infiltration layer specified in (b)(i)(A) of this subsection;~~

~~(B) An anti-erosion layer that provides equivalent protection from wind and water erosion as the anti-erosion layer specified in (b)(i)(B) of this subsection; and~~

~~(C) The additional design features of (b)(i)(C) of this subsection.~~

~~(c)~~)) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during its active life. The closure plan must be submitted to and approved by the jurisdictional health department during the permit process of ((~~Section 700~~)) WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) and((~~, at a minimum,~~)) must include the following information:

(i) A description of the final cover, designed in accordance with (a) ((~~or (b)~~)) of this subsection and the methods and procedures to be used to install the cover;

(ii) An estimate of the largest area of the MSWLF unit or all MSWLF units ever requiring a final cover as required under (a) ((~~or (b)~~)) of this subsection at any time during the active life;

(iii) An estimate of the maximum inventory of wastes ever on-site over the active life of the facility; and

(iv) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection ((~~(1), Closure criteria~~)) including sequencing of each MSWLF unit and the use of intermediate cover.

(((~~d~~))) (c) The owner or operator of existing MSWLF units must no later than ((~~the effective date of this chapter~~)) November 26, 1993:

(i) Prepare a closure plan;

(ii) Place the closure plan in the operating record; and

(iii) Notify the jurisdictional health department that (((~~d~~))) (c)(i) and (ii) of this subsection have occurred.

(((~~e~~))) (d) One hundred eighty days (but no sooner than ((~~the effective date of this chapter~~)) November 26, 1993) prior to beginning closure activities of each MSWLF unit or all MSWLF units as specified in (((~~f~~))) (e) of this subsection, the owner or operator must:

(i) Notify the jurisdictional health department and the financial assurance trustee and/or insurer of the intent to close the MSWLF unit or all MSWLF units according to the approved closure plan; and

(ii) Submit final engineering closure plans for review, comment, and approval by the jurisdictional health department.

(((~~f~~))) (e) The owner or operator must begin closure activities of each MSWLF unit or all MSWLF units in accordance with the closure plan no later than thirty days after the date on which the MSWLF unit or all MSWLF units receives the known final receipt of wastes ((~~or, if~~)). If the MSWLF unit or all MSWLF units has remaining capacity and there is a reasonable likelihood that the MSWLF unit or all MSWLF units will receive additional wastes, the owner or operator must begin closure activities no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the jurisdictional health department if the owner or operator demonstrates during the permit process of WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that the MSWLF unit or all MSWLF units has the capacity to receive additional waste and the owner or operator has taken and will continue to take all steps including the application of intermediate cover necessary to prevent threats to human health and the environment from the unclosed MSWLF unit or all MSWLF units.

(((~~g~~))) (f) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit or all MSWLF units in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in (((~~f~~))) (e) of this subsection. Extensions of the closure period may be granted by the jurisdictional health department if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and he/she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

(((~~h~~))) (g) Following closure of each MSWLF unit or all MSWLF units, the owner or operator must submit to the jurisdictional health department a certification or declaration of construction signed by an independent registered professional engineer verifying that closure has been completed in accordance with the approved final engineering plans and the closure plan.

(((~~(i) Notation on the deed.~~

~~(i)~~))) (h) Environmental covenant. Following closure of all MSWLF units, the owner or operator must ((~~record a notation on the deed to the facility property, and send a copy of the notation as recorded to the jurisdictional health department.~~

~~(ii) The notation on the deed must in perpetuity notify any potential purchaser of the property that:~~

~~(A) The land has been used as a landfill facility; and~~

~~(B) Its use is restricted under subsection (2)(e)(iii) of this section.~~

~~(j) The owner or operator may request permission from the jurisdictional health department to remove the notation from the deed if all wastes (including any contaminated groundwater and soils) are removed from the facility.~~)) file an environmental covenant conforming to the procedures and requirements of chapter 64.70 RCW, Uniform Environmental Covenants Act. Unless waived in writing by the department, the environmental covenant shall be in a form approved by the department and include at a minimum the following provisions:

(i) State that the document is an environmental covenant executed pursuant to chapter 64.70 RCW;

(ii) Contain a legally sufficient description of the real property subject to the covenant;

(iii) Designate the department, or other person approved by the department, as the holder of the covenant;

(iv) Be signed by the department, every holder, and, unless waived by the department, every owner of a fee simple interest in the real property subject to the covenant;

(v) Identify the name and location of the administrative record for the property subject to the environmental covenant;

(vi) Describe with specificity the activity or use limitations on the real property subject to the covenant. At a minimum, this shall prohibit uses and activities that:

(A) Threatens the integrity of any cover, waste containment, storm water control, gas, leachate, public access control, or environmental monitoring systems;

(B) May interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the MSWLF unit and continued protection of human health and the environment; and

(C) May result in the release of solid waste constituents or otherwise exacerbate exposures.

(i) Grant the department and the jurisdictional health department the right to enter the property at reasonable times for the purpose of evaluating compliance with the environmental covenant, including the right to take samples.

(2) Post-closure care requirements.

(a) Following closure of each MSWLF unit or all MSWLF units, the owner or operator must conduct post-closure care. Post-closure care must be conducted for thirty years((~~, except~~)) or as long as necessary for the landfill to become functionally stable. A landfill is functionally stable when it does not present a threat to human health or the environment at the point of exposure for humans or environmental receptors. The point of exposure is identified as the closest location at which a receptor could be exposed to contaminants and receive a dose by a credible pathway from the MSWLF unit. Potential threats to human health or the environment are assessed by considering leachate quality and quantity, landfill gas production rate and composition, cover system integrity, and groundwater quality. The post-closure care period may be adjusted as provided under (b) of this subsection ((~~and~~)). Post-closure care must consist of at least the following:

(i) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, maintaining the vegetative cover (including cutting of vegetation when needed) or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

(ii) Maintaining and operating the leachate collection system in accordance with the requirements in WAC 173-351-300 if applicable. The jurisdictional health department may recommend to the department and the department under its authority in chapter 90.48 RCW, the Water Pollution Con-

trol Act, may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iii) Monitoring the groundwater in accordance with the requirements of WAC 173-351-400((~~, Groundwater monitoring systems and corrective action~~)) and maintaining the groundwater monitoring system((~~, if applicable~~)); and

(iv) Maintaining and operating the gas monitoring system in accordance with the requirements of WAC 173-351-200(4).

(b) The length of the post-closure care period may be:

(i) Decreased by the jurisdictional health department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the jurisdictional health department; or

(ii) Increased by the jurisdictional health department if the jurisdictional health department determines that the lengthened period is necessary to protect human health and the environment((~~.~~));

(iii) The jurisdictional health department and owner or operator will consider at least the following factors when determining when a landfill unit is functionally stable or whether to decrease or increase the post-closure care period:

(A) Leachate. Leachate production and quality must be such that maintenance and operation of the leachate collection system can be ceased beyond the post-closure care period without posing a threat to human health or the environment.

(B) Landfill gas. Landfill gas production and composition must be such that maintenance and operation of the gas collection system can be ceased beyond the post-closure care period while meeting the criteria in WAC 173-351-200(4)(a)(i) through (iii) and not pose a threat to human health or the environment from methane or nonmethane compounds.

(C) Settlement and cover integrity. The cover system must attain geotechnical stability for slope and settlement. Vegetation and other erosion controls must prevent exposing waste or otherwise threaten integrity of the cover system. The cover system must stabilize such that no additional care is required beyond the post-closure care period to ensure its integrity from settlement or erosion.

(D) Groundwater quality. Groundwater quality must remain in compliance with the protection standards established in WAC 173-351-440(8) at the relevant point of compliance.

(c) The owner or operator of all MSWLF units must prepare and submit a written post-closure plan ((~~that is approved by~~)) to the jurisdictional health department ((~~during~~)) through the permit process of ((~~Section 700 and~~)) WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) that includes((~~, at a minimum,~~)) the following information((~~:~~)). Owners or operators must prepare and submit modifications to existing post-closure plans to incorporate the criteria in (b)(iii) of this subsection or environmental covenants in subsection (1)(h) of this section by November 1, 2013.

(i) A description of the monitoring and maintenance activities required in (a) of this subsection for each MSWLF unit or all MSWLF units, and the frequency at which these activities will be performed;

(ii) A description of the monitoring performed and an estimate of the time required following closure of each MSWLF unit or all MSWLF units to meet the criteria in (b)(iii) of this subsection;

(iii) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(((~~iii~~))) (iv) A description of the planned uses of the property during the post-closure period and activity or use limitations placed on the real property by the environmental covenant (1)(h) of this section. Post-closure use of the property ((~~shall~~)) must not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring or control systems unless necessary to comply with the requirements of this regulation. The jurisdictional health department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) ((~~The owner or operator of existing MSWLF units must notify the jurisdictional health department that a post-closure plan has been prepared and placed in the operating record no later than the effective date of this regulation.~~

(~~e~~))) Following completion of the post-closure care period for each MSWLF unit or all MSWLF units, the owner or operator must submit to the jurisdictional health department ((~~and the financial assurance trustee and/or insurer~~)) a certification or declaration of construction signed by an independent ((~~registered~~)) licensed professional engineer verifying that post-closure has been completed in accordance with the post-closure plan.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-600 Financial assurance criteria. (1) Applicability and effective date.

(a) The requirements of this section apply to owners and operators of all MSWLF units.

(b) The requirements of this section are effective on the effective date of this rule((~~, except as provided herein~~)).

(2) Financial assurance for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to close the largest area of all MSWLF units ever requiring a final cover as required under WAC 173-351-500(1), Closure criteria, at any time during the active life in accordance with the closure plan. The owner or operator must ((~~place~~)) submit the detailed written estimate for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 ((~~in order for the jurisdictional health department to determine whether a solid waste permit should be issued~~)) or through the permit modification process of WAC 173-351-720(6).

(i) The cost estimate must equal the cost of closing the largest area of ((~~the MSWLF unit or~~)) all MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by ((~~its~~)) the closure plan ((~~see~~)) as required in WAC 173-351-500 (1)(((~~(c)~~)))(b)(ii).

(ii) During the active life of ((~~the MSWLF unit or~~)) all MSWLF units, the owner or operator must annually adjust the closure cost estimate for inflation.

(iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (b) of this subsection if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(iv) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of ((~~the MSWLF unit or~~)) all MSWLF units. The owner or operator must submit justification for the reduction of the closure cost estimate and the amount of financial assurance to the jurisdictional health department for approval as a condition of the solid waste permit.

(b) The owner or operator of each MSWLF unit ((~~or all MSWLF units~~)) must establish financial assurance for closure of the MSWLF unit ((~~or all MSWLF units~~)) in compliance with ((~~WAC 173-351-600(5), Allowable mechanisms~~)) subsection (5) of this section. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with WAC 173-351-500 (1)(((~~(h)~~))) (g) and (((~~(i)~~))) (h).

(3) Financial assurance for post-closure care.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to conduct post-closure care for ((~~the MSWLF unit or~~)) all MSWLF units in compliance with the post-closure plan developed under WAC 173-351-500(2). The post-closure cost estimate ((~~used to demonstrate, during the permit process of WAC 173-351-700, financial assurance in (b) of this subsection~~)) must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must ((~~place~~)) submit the detailed written estimate for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 ((~~in order for the jurisdictional health department to determine whether a solid waste permit should be issued~~)) or through the permit modification process of WAC 173-351-720(6).

(i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(ii) During the active life of ((~~the~~)) each MSWLF unit ((~~or all MSWLF units~~)) and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (b) of this subsection if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit justification for the reduction of the post-closure cost estimate and the amount of financial assurance to the jurisdictional health department for approval as a condition of the solid waste permit.

(b) The owner or operator of each MSWLF unit ((~~or all MSWLF units~~)) must establish, in a manner in accordance with subsection (5) of this section, financial assurance for the costs of post-closure care as required under WAC 173-351-500(2). The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with WAC 173-351-500 (2)(e).

(4) Financial assurance for ((~~corrective~~)) remedial action.

(a) An owner or operator of a MSWLF unit ((~~or all MSWLF units~~)) required to undertake a ((~~corrective~~)) remedial action program under WAC 173-351-440(((~~(6)~~))) (7) must have a detailed written estimate, in current dollars, of the cost of hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to perform the ((~~corrective~~)) remedial action in accordance with the program required under WAC 173-351-440(((~~(6)~~))) (7). The ((~~corrective~~)) remedial action cost estimate must account for the total costs of ((~~corrective~~)) remedial action activities as described in the ((~~corrective~~)) cleanup action plan for the entire ((~~corrective~~)) remedial action period. Cost estimates are not required for interim actions when the estimated time required to complete the interim action is less than the remaining active life of the MSWLF unit. The owner or operator must submit the ((~~corrective~~)) remedial action cost estimate to the ((~~jurisdictional health~~)) department for approval.

(i) The owner or operator must annually adjust the estimate for inflation until the ((~~corrective~~)) remedial action program is completed in accordance with WAC 173-351-440(((~~(6)~~))) (7).

(ii) The owner or operator must increase the ((~~corrective~~)) remedial action cost estimate and the amount of financial assurance provided under (b) of this subsection if changes in the ((~~corrective~~)) remedial action program or MSWLF unit conditions increase the maximum costs of ((~~corrective~~)) remedial action.

(iii) The owner or operator may reduce the amount of the ((~~corrective~~)) remedial action cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum remaining costs of ((~~corrective~~)) remedial action. The owner or operator must submit justification for the reduction of the ((~~corrective~~)) remedial action cost estimate and the amount of financial assurance to the ((~~jurisdictional health~~)) department for approval.

(b) The owner or operator of each MSWLF unit ((~~or all MSWLF units~~)) required to undertake a ((~~corrective~~)) reme-

dial action program under WAC 173-351-440(((~~(6)~~))) (7), must establish, in a manner in accordance with subsection (5) of this section, financial assurance for the ((~~most recent corrective~~)) costs of remedial actions identified in the cleanup action ((~~program~~)) plan. The owner or operator must provide continuous coverage for ((~~corrective~~)) remedial action until released from ((~~financial assurance requirements for corrective~~)) remedial action under the Model Toxics Control Act regulation, chapter 173-340 WAC. Financial assurance is not required for interim actions when the estimated time required to complete the interim action is less than the remaining active life of the MSWLF unit.

(((~~(c) The requirements of this subsection become effective April 9, 1994.~~)))

(5) Allowable mechanisms. ((~~The mechanisms used to demonstrate financial assurance under WAC 173-351-600 must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Except as otherwise provided herein, owners and operators of MSWLF units must use the financial mechanisms specified in (a) or (b) of this subsection.~~

~~(a) For MSWLF units owned or operated by municipal corporations, the closure, post-closure, and corrective action reserve account shall be handled in one of the following ways:~~

~~(i) Reserve account. Cash and investments accumulated and restricted for closure, post-closure, and corrective action for known releases with an equivalent amount of fund balance reserved in the fund accounting for solid waste activity; or~~

~~(ii) The cash and investments held in a nonexpendable trust fund as specified in (c) of this subsection.~~

~~(b) For MSWLF units owned by private disposal companies, the closure, post-closure, and corrective action for known releases financial assurance account shall be a trust account as spelled out in (c) of this subsection, except that established financial assurance accounts shall not constitute an asset of the facility owner or operator.~~

~~(c)~~)) Owners and operators of MSWLF units must use the financial mechanisms specified in (a), (b), or (c) of this subsection.

(a) Municipal corporations owning or operating MSWLF units must establish closure, post-closure, and remedial action reserve accounts in one of the following ways:

(i) Reserve account. Cash and investments accumulated in a reserve fund restricted for the purpose of closure, post-closure care, or remedial action for known releases;

(ii) Cash and investments in a trust fund;

(iii) Surety bond(s);

(iv) Letter of credit; or

(v) Municipal corporations may satisfy the financial assurance requirements of this section for remedial action in one of the following additional ways:

(A) An interlocal agreement entered into under the Interlocal Cooperation Act, chapter 39.34 RCW, obligating the participating local governments to pay for the remedial action; and

(B) Local government financial test in conformance with 40 C.F.R. 258.74(f). All records required under 40 C.F.R. Part 358.74 (f)(3) must be submitted to the jurisdictional health department and the department.

(b) Private companies owning or operating MSWLF units must establish closure, post-closure, and remedial action financial assurance in one of the following ways:

(i) Cash or investments in a trust fund;

(ii) Surety bond(s);

(iii) Letter of credit.

(c) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (a) and (b) of this subsection, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure, or remedial action, whichever is applicable. Mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

(d) The language of the financial assurance mechanisms listed in this section must ensure that the instruments satisfy the following criteria:

(i) The amount of funds assured is sufficient to cover the costs of closure, post-closure, and remedial action for known releases when needed;

(ii) The funds will be available in a timely fashion when needed; and

(iii) The owner or operator must obtain financial assurance by the effective date of these requirements or prior to the initial receipt of solid waste for closure and post-closure, and no later than one hundred twenty days after establishment of the cleanup action plan for remedial action.

(e) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

(f) An owner or operator satisfying the requirements of this section using a reserve account or trust fund must file with the jurisdictional health department and the department audit reports of the financial assurance accounts established for closure, post-closure, and remedial action, and a statement of the percentage of user fees, as applicable, diverted to the financial assurance instruments:

(i) For facilities owned and operated by municipal corporations, the financial assurance accounts must be audited according to the audit schedule of the office of state auditor. A certification of audit completion and summary findings must be filed with the jurisdictional health department and the department, including during the post-closure care period and while required to undertake remedial action.

(ii) For facilities not owned or operated by municipal corporations:

(A) Annual audits must be conducted by a certified public accountant licensed in the state of Washington. A certification of audit completion and summary findings must be filed with the jurisdictional health department and the department, including during the post-closure care period and while required to undertake remedial action.

(B) The audit must also include, as applicable, calculations demonstrating the proportion of closure, post-closure,

or remedial action activities completed during the preceding year as specified in the closure, post-closure, or cleanup action plans.

(6) Financial assurance instruments established under this section must meet the following criteria.

(a) Trust fund. An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of ((~~(c)~~)) (a)(i) through ((~~(xi)~~)) (viii) of this subsection.

(i) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The owner or operator must place a copy of the trust agreement for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 ((~~in order for the jurisdictional health department to determine whether a solid waste permit should be issued~~)) or through the permit modification process of WAC 173-351-720(6) for closure and post-closure financial assurance and to the department for approval for remedial action financial assurance.

(ii) Pay-in period. Payments into the trust fund must be made annually by the owner or operator over the duration (as defined in WAC 173-351-750) of the initial or reissued permit or over the remaining life of the MSWLF unit ((~~or all MSWLF units~~)), whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the ((~~corrective~~)) remedial action program in the case of ((~~corrective~~)) remedial action for known releases. This period is referred to as the pay-in period.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into ((~~each~~)) the fund must be at least equal to the current cost estimate for closure or post-closure care, except when using multiple mechanisms as provided in ((~~(d)~~)) subsection (5)(c) of this ((~~subsection~~)) section, divided by the number of years in the pay-in period as defined in ((~~(c)~~)) (a)(ii) of this subsection. The amount of subsequent payments must be determined by the following formula:

$$\textit{Next Payment} = \frac{CE\text{-}CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(iv) For a trust fund used to demonstrate financial assurance for ((~~corrective~~)) remedial action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for ((~~corrective~~)) remedial action, except when using multiple mechanisms as provided in ((~~(d)~~)) subsection (5)(c) of this ((~~subsection~~)) section, divided by the number of years in the ((~~corrective~~)) remedial action pay-in period as defined in ((~~(c)~~))(a)(ii) of this subsection. The amount of subsequent payments must be determined by the following formula:

$$\textit{Next Payment} = \frac{RB\text{-}CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for ((~~corrective~~)) remedial action (i.e., the total costs that will be incurred during the second half of the ((~~corrective~~)) remedial action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(v) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure and post-closure care, or no later than one hundred twenty days after the ((~~corrective~~)) cleanup action ((~~remedy~~)) plan has been ((~~selected~~)) established in accordance with the requirements of WAC ((~~173-351-480~~)) 173-351-440 (6) and (7).

(vi) If ((~~a municipal corporation owning or operating MSWLF units~~)) the owner or operator establishes a trust fund after having used ((~~cash and investments held in a nonexpendable reserve account specified in (a)(i) of~~)) one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of ((~~this paragraph and (c)~~)) (a)(iii) and (iv) of this subsection as applicable.

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or ((~~corrective~~)) remedial action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if:

(A) Sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or ((~~corrective~~)) remedial action;

(B) If justification and documentation of the cost is submitted to the jurisdictional health department for closure and post-closure or the department for remedial action for review and approval; and

(C) The owner or operator has a post-closure permit in effect according to WAC ((~~173-351-730~~)) 173-351-720 (4)(c).

(viii) The trust fund may be terminated by the owner or operator only if:

((~~(ix) In the case of a municipal corporation owning or operating MSWLF units, the municipal corporation~~)) (A) The owner or operator substitutes ((~~a reserve account as specified in (a)(i) of~~)) alternate financial assurance as specified in this subsection; or

((~~(x) Any~~)) (B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (2)(b), (3)(b), or (4)(b) of this section.

((~~(d) Use of multiple financial mechanisms. A municipal corporation owning or operating MSWLF units may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (a) and (b) of this subsection, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable.~~

~~(e) For MSWLF units undergoing corrective action, allowable financial assurance mechanisms include:~~

~~(i) Any method approved by EPA under 40 CFR 258.74(f);~~

~~(ii) An interlocal agreement entered into under the Interlocal Cooperation Act, chapter 39.34 RCW, obligating the participating local governments to pay for the corrective action.~~

~~(f) The language of the mechanisms listed in (a) and (b) of this subsection must ensure that the instruments satisfy the following criteria:~~

~~(i) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;~~

~~(ii) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;~~

~~(iii) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of WAC 173-351-460, until the owner or operator is released from the financial assurance requirements under subsection (2)(b), (3)(b), or (4)(b) of this section.~~

~~(g) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.~~)) (b) Surety bond guaranteeing payment or performance. An owner or operator may satisfy the requirements of this section with a surety bond guaranteeing payment or performance which conforms to the requirements of (b)(i) through (viii) of this subsection.

(i) The owner or operator must place a copy of the bond and standby trust agreement for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 or through the permit modification process of WAC 173-351-720(6) for closure and post-closure financial assurance and the department for approval for remedial action financial assurance.

(ii) The surety company must be listed as acceptable in Circular 570 of the United States Treasury Department.

(iii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure, or remedial action cost estimate except when using multiple financial mechanisms as provided in subsection (5)(d) of this section.

(iv) The surety must become liable for the bond obligation if the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator must also establish a standby trust fund meeting the requirements of (6)(a) of this subsection except for specified initial and subsequent annual payments. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(vi) The surety may not cancel the bond until at least one hundred twenty days after the owner or operator, the jurisdictional health department, and the department have received notice of cancellation. If the owner or operator has not provided alternate financial assurance conforming to this section within ninety days of the cancellation notice, the surety must pay the amount of the bond into the standby trust fund.

(vii) The owner or operator may cancel the bond only by substituting alternate financial assurance conforming to this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with subjection (2)(b), (3)(b), or (4)(b) of this section.

(viii) The following types of surety bonds are allowed:

(A) Surety bond; or

(B) Surety bond guaranteeing that the owner or operator will perform final closure, post-closure, or remedial action activities.

(c) Irrevocable letter of credit. An owner or operator may satisfy the requirements of this section with an irrevocable letter of credit which conforms to the requirements of (c)(i) through (v) of this subsection. The issuing institution must have the authority to issue letters of credit and its letter of credit operations must be regulated and examined by a federal or state agency.

(i) The owner or operator must also establish a standby trust fund meeting the requirements of (a) of this subsection except for specified initial and subsequent annual payments. Payments made under the terms of the irrevocable letter of credit will be deposited by the institution directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(ii) The following must be submitted for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 for closure and post-closure financial assurance, and to the department for approval for remedial action financial assurance:

(A) The letter of credit;

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, address of the facility, and the amount of funds assured; and

(C) A copy of the standby trust agreement.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current closure, post-closure, or remedial action cost estimate except when using multiple financial mechanisms as provided in subsection (5)(d) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution notifies the owner or operator, the jurisdictional health department, and the department at least one hundred twenty days before the current expiration date.

(iv) If the owner or operator fails to perform activities according to the closure, post-closure, or cleanup action plans, or if the owner or operator fails to provide alternate financial assurance conforming to this section within ninety days after notification that the letter of credit will not be extended, the issuing institution must deposit the funds from the letter of credit to the standby trust fund.

(v) The owner or operator may cancel the letter of credit only by substituting alternate financial assurance conforming to this section or if the owner or operator is no longer required

to demonstrate financial responsibility in accordance with subsection (2)(b), (3)(b), or (4)(b) of this section.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-700 Permitting requirements. (1) WAC 173-351-700 through 173-351-750 ((~~shall constitute~~)) are the permitting requirements of chapter 173-351 WAC, Criteria for municipal solid waste landfills. Except as provided ((~~for~~)) in subsection ((~~(5)~~)) (4) of this section, no owner or operator shall construct, operate, close, or perform post-closure activity with respect to a facility except in conformance with a valid MSWLF permit issued pursuant to this chapter.

(2) Transition rules for existing MSWLF units. The following constitute the transition rules for this section:

(a) Existing MSWLF units with valid chapter 173-304 WAC permits expiring before ((~~the effective date of this chapter~~)) November 26, 1993. Owners or operators of existing MSWLF units having valid permits expiring before ((~~the effective date of this chapter~~)) November 26, 1993, must apply for a valid MSWLF permit no later than ((~~ninety days after promulgation of this regulation~~)) January 24, 1994, to continue operation under the terms of this regulation. Each valid chapter 173-304 WAC permit expiring before ((~~the effective date of this chapter~~)) November 26, 1993, is hereby continued until the valid MSWLF permit is issued under these rules. For these transition rules, the owner or operator ((~~shall~~)) must prepare applications according to WAC 173-351-730(4), Reissuance/transition applications. Upon issuance of a valid MSWLF permit, the owner or operator must comply with the requirements of this regulation.

Note: MSWLF units that do not accept waste on or after ((~~the effective date of this chapter~~)) November 26, 1993, and close under chapter 173-304 WAC, Minimum functional standards for solid waste handling, and the federal rules for closure under 40 C.F.R. Part 258.60 would continue to be permitted under chapter 173-304 WAC unless such MSWLF units are part of a multiunit groundwater monitoring system according to WAC 173-351-450(4).

(b) Existing MSWLF units with valid chapter 173-304 WAC permits expiring on or after ((~~the effective date of this chapter~~)) November 26, 1993. Each valid chapter 173-304 WAC permit (for existing MSWLF units) expiring on or after ((~~the effective date of this rule~~)) November 26, 1993, is hereby continued until the expiration date set forth in the permit. Owners and operators must comply with the conditions of the permit and the regulations of chapter 173-304 WAC, in effect on October 8, 1993, for the duration of that permit. Owners or operators of existing MSWLF units with valid chapter 173-304 WAC permits expiring on or after ((~~the effective date of this chapter~~)) November 26, 1993, must apply for a valid MSWLF permit no later than ((~~ninety days after promulgation of this regulation~~)) January 24, 1994. For these transition rules, the owner or operator ((~~shall~~)) must prepare applications according to WAC 173-351-730(4), Reissuance/transition applications. Upon issuance of a valid MSWLF permit, the owner or operator must comply with the requirements of this regulation.

((~~Note: See also WAC 173-351-720 (6)(a), filing for reissuance.~~))

(3) New and laterally expanded MSWLF units. New and laterally expanded MSWLF units receiving waste after ((~~the effective date of this chapter~~)) November 26, 1993, ((~~shall~~)) must meet the requirements of this section before construction has begun and before waste is accepted to the MSWLF unit or lateral expansion.

Note: Any owner or operator planning to incorporate a 50 percent increase or greater in design volume capacity not previously authorized in permit, or unpermitted changes resulting in significant adverse environmental impacts that have ((~~lead~~)) led a responsible official to issue a declaration of significance under WAC 197-11-736 ((~~shall~~)) must meet the requirements of this section before construction has begun and before waste is accepted to the MSWLF unit, or lateral expansion.

(4) Exemptions. The MSWLF units identified in this subsection are exempt from this section:

(a) MSWLF units that are excluded under WAC 173-351-010 (2)(b);

(b) Single family residences and single family farms dumping or depositing solid waste resulting from their own domestic, on-site activities onto or under the surface of land owned or leased by them when such action does not create a nuisance, violate any other statutes, ordinances, regulations, or this regulation, provided that such facilities:

(i) Are fenced or otherwise protected by natural barriers from unauthorized entry by the general public and large animal scavengers; and

(ii) Have placed a monthly soil cover to allow no visible solid waste.

(c) ((~~Corrective~~)) Remedial actions at a MSWLF unit performed by the state and/or in conjunction with the United States Environmental Protection Agency to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), the Model Toxics Control Act or ((~~corrective~~)) remedial actions taken by others to comply with a state and/or federal cleanup order provided that:

(i) The action results in an overall improvement of the environmental impact of the site;

(ii) The action does not require or result in additional waste being delivered to the facility or increase the amount of waste or contamination present at the facility;

(iii) The ((~~facility standards of WAC 173-351-300, 173-351-320, and 173-351-500~~)) substantive provisions of this chapter are met; and

(iv) The jurisdictional health department is informed of the actions to be taken and is given the opportunity to review and comment upon the proposed ((~~corrective~~)) remedial action plans.

Note: MSWLF units not covered under ((~~corrective~~)) remedial action are not exempted from permitting under this section.

(((~~(5) Renewal required. The owner or operator of a facility shall apply for renewal of the facility's permit annually, except for that year that a permit has been or will be reissued under WAC 173-351-720(6).~~)))

NEW SECTION

WAC 173-351-710 Research, development, and demonstration permits. (1) The jurisdictional health department, with the written concurrence of the department, may issue a

research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, from which the owner or operator proposes to utilize innovative methods which vary from the following criteria provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a one foot (30 cm) depth of leachate on the liner and has not been identified as a potential source of contamination:

(a) The run-on control system in WAC 173-351-200(7); and

(b) The liquids restriction in WAC 173-351-200(9).

(2) The jurisdictional health department, with the written concurrence of the department, may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative methods which vary from the final cover criteria of WAC 173-351-500 (1)(a), provided the MSWLF unit owner or operator demonstrates that the MSWLF unit is not a source of contamination and the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause the leachate depth on the liner to exceed one foot (30 cm).

(3) The jurisdictional health department and the department must follow the procedures of WAC 173-351-720(1) except the jurisdictional health department must not issue a permit if the department recommends against its issuance. Any permit issued under this section must include terms and conditions that are at least as protective as the criteria for municipal solid waste landfills, and assure protection of human health and the environment. Such permits must:

(a) Include clearly stated and demonstrable project goals;

(b) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in subsections (5) and (6) of this section;

(c) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous waste which the jurisdictional health department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(d) Include requirements necessary to protect human health and the environment, including requirements necessary for testing and providing information to the jurisdictional health department with respect to the operation of the facility;

(e) Require the owner or operator of a permitted MSWLF unit under this section to submit an annual report to the jurisdictional health department and the department showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results and any other operating information specified by the jurisdictional health department in the permit; and

(f) Require compliance with all criteria in this chapter, except as permitted under this section.

(4) The jurisdictional health department may order an immediate termination of all operations at the facility permitted under this section or other corrective measures any time it determines that the overall goals of the project are not being attained or protecting human health and the environment.

(5) Any permit issued under this section must not exceed three years and each renewal must not exceed three years. The total term for a project permit including renewals may not exceed twelve years.

(6) Permit renewal.

(a) The owner or operator of a MSWLF unit must apply for renewal of a permit under this section at least ninety days before the existing permit expires. The owner or operator must provide the jurisdictional health department two copies of:

(i) A detailed assessment of the project showing the status with respect to achieving project goals;

(ii) A list of problems and status with respect to problem resolutions;

(iii) The information required in WAC 173-351-730 (3)(b); and

(iv) Any other requirements that the jurisdictional health department determines necessary for permit renewal.

(b) Once the jurisdictional health department determines that a renewal application is factually complete, it must refer one copy to the appropriate regional office of the department for review and comment.

(c) Standards for approval. The jurisdictional health department and the department must review the original application and additional information contained in the renewal application to determine whether the facility meets all applicable laws and regulations and conforms to the most recently adopted comprehensive solid waste management plan.

(d) Fees. The jurisdictional health department may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department must be deposited in the account from which the jurisdictional health department's operating expenses are paid.

(e) Department's findings. The department will report to the jurisdictional health department its findings on each renewal permit application within thirty days of receipt of a complete application. Additionally, the department must recommend for or against the renewal of each research, demonstration, and demonstration permit by the jurisdictional health department.

(f) Permit approval. When the jurisdictional health department has evaluated all information in the renewal application, it will, with the written concurrence of the department renew the permit for a period not to exceed three years or deny the permit. Every complete renewal application must be approved or disapproved within forty-five days after its receipt by the jurisdictional health department or inform the owner or operator as to the status of the application with a schedule for final determination.

(g) Permit format. Every permit issued by a jurisdictional health department must be on a format prescribed by the department and contain specific requirements necessary for the proper operation of the facility including the requirement that final engineering plans and specifications be submitted for approval by the jurisdictional health department.

(h) Filing permits with the department. The jurisdictional health department must mail all renewed permits to the

department no more than seven days after the date of issuance. The department will review and may appeal the permit as set forth in RCW 70.95.185 and 70.95.190. No permit issued pursuant to this chapter will be valid unless it has been reviewed by the department.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-720 Permit application procedures. (1) Initial and reissuance procedures.

(a) Forms and complete application. An application for ((~~any~~)) a permit under this regulation must be submitted on a form prescribed by the department. In order to be ((~~determined~~)) complete:

(i) Two or more copies (as determined by the jurisdictional health department) of the application must have been signed by the owner and operator and received by the jurisdictional health department;

(ii) The application must include evidence of compliance with the State Environmental Policy Act (SEPA) rules, chapter 197-11 WAC; and

(iii) The application must include the plans, reports, and other supporting information required by this regulation.

(b) Notice. Once the jurisdictional health department determines that an application for a permit is ((~~factually~~)) complete, it ((~~shall~~)) will:

(i) Refer one copy to the appropriate regional office of the department for review and comment;

(ii) For all permits except renewal, modified and transition permits give notice of its receipt of a ((~~proposed~~)) complete permit application to the public and to interested persons for public comment for thirty days after the publication date of the notice((~~;~~

~~(iii) For all permits except renewal, modified and transition permits~~)) and perform the following additional public notification requirements:

(A) Mail the notice to persons who have requested notice in writing;

(B) Mail the notice to state agencies and local governments with a regulatory interest in the proposal;

(C) Include in the public notice a statement that any person may express their views in writing to the jurisdictional health department within thirty days of the last date of publication;

(D) Mail a copy of the MSWLF permit decision to any person who has made written request for such decision; and

(E) Add the name of any person, upon request, to a mailing list to receive copies of notices for all applications((~~, within the state or within a geographical area~~)).

(c) Standards for approval. The jurisdictional health department ((~~shall~~)) must investigate every application to determine whether the facility meets all applicable laws and regulations, conforms ((~~with~~)) to the most recently adopted comprehensive solid waste management plan in effect at the time of application and complies with all zoning requirements. A land use permit or letter from the jurisdictional zoning authority ((~~shall be~~)) is sufficient ((~~demonstration of~~)) to demonstrate compliance with zoning requirements.

(d) Fees. The jurisdictional health department may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department ((~~shall~~)) must be deposited in the account from which the jurisdictional health department's operating expenses are paid.

(e) Department's findings. The department ((~~shall~~)) will report to the jurisdictional health department its findings on each permit application within forty-five days of receipt of a complete application or inform the jurisdictional health department as to the status of the application and when it expects its findings will be transmitted to the jurisdictional health department. Additionally, the department ((~~shall~~)) must recommend for or against the issuance of each permit by the jurisdictional health department.

(f) Permit approval. When the jurisdictional health department has evaluated all information in the public record, it ((~~shall~~)) will issue or deny a permit. Every ((~~completed solid waste~~)) complete permit application ((~~shall~~)) must be approved or disapproved within ninety days after its receipt by the jurisdictional health department or inform the owner or operator ((~~shall be informed~~)) as to the status of the application with a schedule for final determination.

(g) Permit format. Every permit issued by a jurisdictional health department ((~~shall~~)) must be on a format prescribed by the department and ((~~shall~~)) contain specific requirements necessary for the proper operation of the facility including the requirement that final engineering plans and specifications be submitted for approval ((~~to~~)) by the jurisdictional health department.

(h) Filing permits with the department. The jurisdictional health department ((~~shall~~)) must mail all issued permits to the department no more than seven days after the date of issuance. The department ((~~shall~~)) will review and may appeal the permit as set forth in RCW 70.95.185 and 70.95.190. No permit issued pursuant to this chapter will be valid unless it has been reviewed by the department.

(((~~(i) Renewal procedures. The owner or operator of a facility shall apply for renewal of the MSWLF permit annually, except for that year that a permit has been or will be reissued under subsection (6) of this section. The owner or operator is authorized to continue all activities authorized under the currently expired permit, if the jurisdictional health department has not rendered a decision on renewal by the yearly renewal date of the current permit. The jurisdictional health department shall annually:~~

~~(A) Review the original application and such additional information as required in WAC 173-351-730 (3)(b) for compliance with these regulations;~~

~~(B) Collect the renewal fee if the jurisdictional health department so chooses;~~

~~(C) If the requirements of (b)(i)(A) of this subsection are met, renew the permit; and~~

~~(D) File the renewed permit with the department no more than seven days after the date of renewal. The department shall review and may appeal the renewal as set forth in RCW 70.95.185 and 70.95.190. See also reissuance under subsection (6) of this section.~~)) (2) SEPA review. The State Environmental Policy Act (SEPA), the SEPA rules and ((~~the~~)) local SEPA rules apply to permit decisions made pursuant to this chapter.

(3) Preapplication meetings. Preapplication meetings between the jurisdictional health department and the owner or operator are encouraged to address, among other things, the development of a complete application ((~~pertaining to the owner's or operator's prospective project~~)).

(4) Activities authorized in permits, generally.

(a) Construction. ((~~Issuance of~~)) A valid MSWLF permit entitles the ((~~permittee~~)) owner or operator to construct the MSWLF unit or MSWLF units, subject to ((~~any appropriate~~)) conditions the jurisdictional health department may impose. ((~~If the facility is to be constructed in several or more MSWLF units, the initial application must contain the conceptual design for the entire facility and the information of WAC 173-351-730 (1)(b) for the initial MSWLF unit. In addition, information of WAC 173-351-730 (1)(b) may be submitted covering all other MSWLF units that will be constructed up to the first ten years of facility operation. The permit will identify the extent of each permitted MSWLF unit and the specific time frames for the first MSWLF unit and estimated time frames for subsequent MSWLF units within which construction activities must begin and end for each MSWLF unit.~~)) Authorization to construct each lateral expansion or subsequent MSWLF unit ((~~must, as to that MSWLF unit, contain the detailed construction plans as specified in this regulation, and those plans~~)) is subject to the preconstruction review requirements of WAC 173-351-750(4) and the construction of ((~~that~~)) each lateral expansion or MSWLF unit must comply with all requirements of ((~~the SEPA and of~~)) this regulation and other regulations applicable at the time jurisdictional health department approval is granted.

(b) Operation. Except for MSWLF units governed by the transition rules of WAC 173-351-700(2), the jurisdictional health department's approval to accept solid waste will not be given until the ((~~permittee~~)) owner or operator has demonstrated to the jurisdictional health department's satisfaction that ((~~the~~)) each MSWLF unit has been constructed in accordance with the approved plans and specifications for that MSWLF unit. ((~~If a facility is to be constructed in several or more MSWLF units, the jurisdictional health department must determine that each specific MSWLF unit has been constructed in accordance with the approved permit before operation will be permitted in that specific MSWLF unit.~~))

(c) Post-closure activities. The jurisdictional health department's approval for post-closure activities will not be given until the permittee has demonstrated to the jurisdictional health department's satisfaction that the MSWLF unit or all the MSWLF units have been closed in accordance with the final engineering plans of WAC 173-351-500 (1)(e)(ii) and the approved closure plan.

Note: Failure to obtain approval for post-closure activities may prevent reimbursement under post-closure financial assurance in WAC 173-351-600.

(5) Renewal procedures. Except as provided in WAC 173-351-710(6), the owner or operator of a facility must apply for renewal of the MSWLF permit at least thirty days before the renewal date. The owner or operator is authorized to continue activities authorized under the most recent expired permit, if the jurisdictional health department has not rendered a decision on renewal by the renewal date of the current permit.

(a) Prior to renewing a permit, the jurisdictional health department will:

(i) Review the original application, modifications, and additional information required in WAC 173-351-730 (3)(b) for compliance with these regulations; and

(ii) Collect the renewal fee if the jurisdictional health department so chooses.

(b) If the facility meets all applicable laws and regulations and conforms to the most recently adopted comprehensive solid waste management plan, the jurisdictional health department may renew the permit for a period not to exceed five years; and

(c) The jurisdictional health department must file the renewed permit with the department no more than seven days after the date of renewal. The department will review and may appeal the renewal as set forth in RCW 70.95.185 and 70.95.190. See also reissuance under subsection (6) of this section. No permit issued pursuant to this chapter will be valid unless it has been reviewed by the department.

(6) Permit modifications.

(a) Any owner or operator intending to modify a valid MSWLF permit must file a modification application at least ((~~thirty~~)) forty-five days before the intended modification. A modification application must be made on forms authorized by the jurisdictional health department and the department, and the forms must include information identified in WAC 173-351-730 (3)(a).

(b) The jurisdictional health department ((~~shall~~)) will follow the procedures of subsection (1) of this section in issuing a permit modification except for the following:

(i) Subsection (1)(b)(ii) and (iii) of this section, public notice; ((~~and~~))

(ii) ((~~Subsection (1)(i) of this section, renewal procedures.~~)) The department will report its findings under subsection (1)(e) of this section within thirty days; and

(iii) The jurisdictional health department will approve or disapprove the modification application within forty-five days after its receipt or inform the owner or operator as to the status of the application with a schedule for final determination.

(c) ((~~In order~~)) To allow for permit modifications to be authorized at the time of permit renewal, any owner or operator may combine the application required for a permit modification in WAC 173-351-730 (3)(a) with the application required for a renewal permit in WAC 173-351-730 (3)(b)((~~, at the time of permit renewal~~)).

((~~(6)~~)) (d) Lateral expansions, a fifty percent increase or greater in design volume capacity, or changes resulting in significant adverse environmental impacts that have led a responsible official to issue a declaration of significance under WAC 197-11-736 are not considered a modification but require permit reissuance under these rules.

(7) Permit reissuance. ((~~Except for permits during transition under subsection (2) of this section,~~)) Any owner or operator intending to continue construction, operation, or post-closure beyond the permitted duration of a valid MSWLF permit must file a reissuance application at least ninety days before the existing permit expires. Reissuance

applications are subject to the public notification process of subsection (1)(b) of this section. A reissuance application must be made on forms authorized by the jurisdictional health department and the department, and must include information identified in WAC 173-351-730(4). The jurisdictional health department will follow the procedures of subsection (1) of this section in reissuing a permit.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-730 Contents of applications. (1) Applications for MSWLF permits and level of detail((~~, generally~~)).

(a) General requirements for MSWLF permit applications and level of detail.

(i) An application for an MSWLF permit to construct, operate, and conduct post-closure activities at a facility must include all applicable information identified in this section ((~~pertaining to the facility for which the permit is being sought~~)).

(ii) The information in every application submitted under this regulation must be of sufficient detail so as to allow the jurisdictional health department to fulfill its responsibilities under SEPA and this regulation by:

(A) Having detail sufficient to be readily understood by the persons using the documents ((~~contained in the application~~)) to enable them to determine how the facility will be constructed, operated, and closed and how it will be monitored and maintained after closure;

(B) Providing the jurisdictional health department with sufficient detail to ascertain the environmental impact of the proposed project; and

(C) Providing sufficient detail to demonstrate that the location, design, construction, operation, closure, and post-closure monitoring and maintenance of the MSWLF will be capable of compliance with the applicable requirements of this regulation.

(iii) If the facility is to be constructed in phases, the initial application must contain the conceptual design for the entire facility and the information of subsection (1)(b) of this section for the initial MSWLF unit and other MSWLF units that will be constructed during the active life of the facility.

(iv) Applications for new MSWLF units or lateral expansions must include documentation that all owners of property located within one thousand feet of the facility property boundary have been notified that the proposed facility may impact their ability to construct water supply wells in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(b) Specific requirements for permit applications. In addition to other requirements set forth in this section, complete applications for MSWLF permits must contain the following:

(i) Engineering plans that set forth the proposed facility's location, property boundaries, adjacent land uses, and detailed construction plans pursuant to subsection (5)(a) of this section;

(ii) How the facility will meet the location standards of WAC 173-351-130 and 173-351-140 ((~~including demonstrations~~));

(iii) A hydrogeologic report and water quality monitoring plan prepared in accordance with the provisions of WAC 173-351-400 (((~~including all demonstrations~~)));

(iv) ((~~The~~)) A plan of operation that ((~~prescribes~~)) describes how the facility will ((~~fulfill~~)) meet the operating requirements set forth in WAC 173-351-200, 173-351-210, and 173-351-220((~~, including the demonstrations of this regulation~~));

(v) An engineering report ((~~comprehensively~~)) describing the existing site conditions and an analysis of the facility, including closure((~~,~~)) and post-closure criteria((~~, and any necessary demonstrations~~)) conforming with subsection (5)(b) of this section;

(vi) A construction quality assurance and quality control plan prepared in accordance with subsection (6) of this section;

(vii) ((~~The~~)) Closure and post-closure plans required by WAC 173-351-500((~~, including the schedule of WAC 173-351-500 (1)(e)(iv) and for the submission of final engineering plans for closure six months prior to closure of the facility or the MSWLF unit. See WAC 173-351-500 (1)(e)(ii)~~));

(viii) A permit or signed permit application satisfying the applicable requirements for MSWLF units with leachate collection systems:

(A) Discharge under the Water Pollution Control Act, chapter 90.48 RCW;

(B) Either a legal document (contract, local permit, a signed permit application etc.) certifying acceptance of leachate by the operator of a wastewater treatment facility for the discharge of leachate to that facility((~~, or an application for a National Discharge Elimination System (NPDES) permit pursuant to chapter 173-220 WAC or a state discharge permit (for solar evaporation ponds having no surface water discharge) pursuant to chapter 173-216 WAC or other necessary environmental permit applications (including air quality permit applications) for otherwise managing leachate;~~

~~(ix) For small landfills, the demonstration of WAC 173-351-010 (2)(c)~~));

(((~~(x)~~)) (C) Surface impoundments or tanks under WAC 173-350-330; and

(D) Other environmental permits applicable to managing leachate at the facility.

(ix) Cost estimates and mechanisms the owner or operator will use to meet the financial assurance requirements of WAC 173-351-600;

(x) How the owner or operator will meet the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities;

(xi) A demonstration of how the MSWLF conforms ((~~with~~)) to the approved local comprehensive solid waste management plan in place at the time of application; and

(xii) Any other information as required by the jurisdictional health department.

(2) Combined applications. Owners or operators may file a combined application for MSWLF units and other solid waste handling ((~~facilities~~)) units, such as surface impoundments, composting facilities, and storage piles regulated

under chapter 173-350 WAC, Solid waste handling standards, and MSWLF units closed under and/or regulated by chapter 173-304 WAC, Minimum functional standards for solid waste handling or other rules promulgated under the authority of chapter 70.95 RCW, including this regulation. The combined application must contain information required by each applicable regulation.

(3) Modification and renewal applications.

(a) Modification applications. An application ((~~on forms~~)) specified by the jurisdictional health department and the department to modify a valid MSWLF permit issued pursuant to WAC 173-351-700 must include, and address, the following ((~~at a minimum~~)):

(i) A description of the proposed modification;

(ii) The reasons for the proposed modification;

(iii) A description of the impacts from the proposed modification upon the MSWLF unit or the facility as presently permitted; ((~~and~~))

(iv) A showing that, as modified, the MSWLF unit will be capable of compliance with the applicable requirements of this regulation; and

(v) Any other information as required by the jurisdictional health department.

(b) Renewal applications. An application ((~~on forms~~)) specified by the jurisdictional health department and the department to renew a permit issued pursuant to WAC 173-351-700 must include and address the following ((~~at a minimum~~)):

(i) Any changes in operating methods((~~, closure cost or post-closure costs~~)) or other changes not falling under the definition of a permit modification;

(ii) Any changes as revealed by inspections, or complaints;

(iii) ((~~Evidence that the annual report of WAC 173-351-200(11) has been submitted;~~

(~~iv~~))) A list of documents added to the operating record according to WAC 173-351-200(10); ((~~and~~

(~~v~~))) (iv) Evidence that all MSWLF unit operators have continued to comply with the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities; and

(v) Any other information as required by the jurisdictional health department.

(4) Reissuance/transition applications. An application to reissue a permit previously issued pursuant to this regulation or to convert a chapter 173-304 WAC permit to a valid MSWLF permit under the transition permit rules of WAC 173-351-700(2) must((~~, at a minimum,~~)) include and address the following:

(a) Review the original application and permit for compliance with these regulations and submit ((~~such~~)) additional information as follows:

(i) A compliance summary showing how the facility's construction, operation, closure and post-closure activities, as applicable, have been undertaken either in compliance or not in compliance with the terms and conditions of the expiring permit;

(ii) ((~~Specifying~~)) Specify any changes proposed by the owner or operator to((~~, and detailing any changes in circumstance that may affect,~~)) the design, construction, operation, closure, or post-closure care of the facility and describing how ((~~compliance~~)) the proposed changes will comply with the applicable requirements of this regulation ((~~will be assured~~)).

(b) Review ((~~of~~)) information collected from inspections, complaints, or known changes in the operations including:

(i) Results of groundwater monitoring ((~~taken during the operation (including closure/post-closure) of the facility according to WAC 173-351-400 or 173-304-490 as appropriate~~)); and

(ii) Results of surface water and methane monitoring ((~~taken during the operation (including closure/post-closure) of the facility~~)).

(5) Engineering plans, reports, and specifications. Unless otherwise specified in chapter 173-351 WAC, all engineering plans, reports, ((~~and~~)) specifications, programs, and manuals must comply with the requirements of this subsection. Engineering plans, reports, specifications, programs, and manuals submitted to the jurisdictional health department or the department must be prepared and certified by an individual licensed to practice engineering in the state of Washington, in engineering disciplines associated with landfill design and construction or with experience in landfill design and construction and to practice engineering ((~~in the state of Washington~~)).

(a) Engineering plans. Unless otherwise specified in this chapter, ((~~the~~)) engineering plans for all MSWLF units must be submitted using the following format:

(i) The sheet size with title blocks must be twenty-two inches by thirty-four inches or twenty-four inches by thirty-six inches.

(ii) The cover sheet must include the project title, owner's and operator's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal.

(iii) The preliminary engineering plans relating the project to its environmental setting must include:

(A) A regional plan or map (having a minimum scale of 1:62,500) and indicate directions and distances to airports within ((~~five~~)) six miles (((~~eight~~)) ten kilometers) of the facility;

(B) A vicinity plan or map (having a minimum scale of 1:24,000) that ((~~must~~)) shows the area within one mile (1.6 kilometers) of the property boundaries of the facility in terms of, the existing and proposed zoning and land uses within that area; and residences, public and private water supply wells, known private water supply aquifers, sole source aquifers, groundwater management areas, well-head protection zones, special protection areas and surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the facility; and

(C) An overall site plan (having a minimum scale of 1:2,400 with five foot (or one meter) minimum contour intervals) that must show the landfill's property boundaries (as certified by an individual licensed to practice land surveying in the state of Washington), offsite and onsite utilities (such as electric, gas, water, storm, and sanitary sewer systems) and right of way easements; the 100-year flood plain, wetlands,

Holocene faults, unstable areas; the names and addresses of contiguous property owners; the location of soil borings, excavations, test pits, gas venting structures, wells (including down-gradient drinking water supply wells within two thousand feet (six hundred ten meters) of the property boundary), lysimeters, piezometers, environmental and facility monitoring points and devices (with each identified in accordance with a numbering system acceptable to the jurisdictional health department and whose horizontal location are accurate to the nearest 0.5 foot (0.15 meter) and all orthometric evaluations should be related to a vertical benchmark based on the ((~~national geodetic~~)) North American vertical datum of ((~~1929 (NGVD29)~~)) 1988 (NAVD88) and be established to 3rd order classification standards per federal geodetic control committee, ((~~or its successor, as specified in WAC 332-130-060~~)) as measured from the ground surface and top of well casing), benchmarks and permanent survey markers, and onsite buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total landfill area including planned staged development of the landfill's construction and operation, and the lateral and vertical limits of previously filled areas; the location and identification of the sources of cover materials; the location and identification of special waste handling areas; a wind rose; and site topography with five foot (or one meter) minimum contour intervals.

Note: All horizontal locations ((~~shall~~)) must be based upon a control station related to a horizontal datum specified in chapter 58.20 RCW and chapter 332-130 WAC (NAD.83 (((~~1991~~)))).

(D) Detailed plans of the landfill ((~~must~~)) that clearly show in plan and cross-sectional views, the original, undeveloped site topography before excavation or placement of solid waste; the existing site topography (if different from the original, undeveloped site topography) including the location and approximate thickness and nature of any existing solid waste; the seasonal high groundwater table; generalized geologic units; known and interpolated bedrock elevations; the proposed limits of excavation and waste placement; the location and placement of each liner system and of each leachate collection system, locating and showing all critical grades and elevations of the collection pipe inverts and drainage envelopes, manholes, cleanouts, valves, sumps, and drainage blanket thicknesses; all berms, dikes, ditches, swales and other devices as needed to divert or collect surface water runon or runoff; the final elevations and grades of the landfill cover system including the grading and gas venting layer, low permeability barrier, topsoil layers; the system used for monitoring and venting the decomposition gases generated within the landfill; groundwater monitoring wells; geophysical and geochemical monitoring devices or structures; leachate storage, treatment and disposal systems including the collection network, sedimentation ponds and any treatment, pretreatment, or storage facilities; typical roadway sections, indicating the pavement type, dimensions, slopes and profiles; the building floor plans, elevations, appurtenances; and plans detailing the landfill entrance area including gates, fences, and signs.

(b) Engineering reports. The engineering reports for a facility must:

(i) Contain a cover sheet, stating the project title and location, the owner's or operator's name, and the engineer's name, address, signature, date of signature, and seal((~~.~~));

(ii) Have its text printed on 8 1/2" by 11" pages (paginated consecutively);

(iii) Contain a table of contents or index describing the body of the report and the appendices;

(iv) Include a body of report whose content is described by (c) of this subsection; and

(v) Include all appendices.

(c) An engineering report ((~~containing~~)) must contain a description of the existing site conditions and, at a minimum, an analysis of the proposed facility that must:

(i) Describe current operating practices, expected life and any pending litigation or ((~~corrective~~)) remedial actions relating to the existing or past facilities;

(ii) Specify the proposed design capacity of the MSWLF unit for which approval is being sought, describing the number, types, and the minimum specifications of all the necessary machinery and equipment needed to effectively operate the landfill at the proposed design capacity;

(iii) Contain a site analysis ((~~of the proposed action~~)) including:

(A) The location of the closest population centers;

(B) A comprehensive description of the primary transportation systems and routes in the facility service area (i.e., highways, airports, railways, etc.);

(C) An analysis of the existing topography, surface water and subsurface geological conditions in accordance with the hydrogeologic report requirements of WAC 173-351-490;

(D) A description of the materials and construction methods used for the placement of each groundwater monitoring well pursuant to the requirements of WAC 173-351-400 and gas monitoring well pursuant to WAC 173-351-200(4); all gas venting systems; each liner and leachate collection and removal system; leachate storage, treatment, and disposal systems; and cover systems to demonstrate conformance with the design requirements found in WAC 173-351-300, 173-351-320, and 173-351-500. This description also must include a discussion of provisions to be taken to prevent frost action upon each liner system in areas where refuse has not been placed;

(E) An estimate of the expected quantity of leachate to be generated, including:

(I) An annual water budget that estimates leachate generation quantities during ((~~initial~~)) operation, upon application of intermediate cover, and following MSWLF unit or all MSWLF units closure. At a minimum, the following factors must be considered in the preparation of the water budget to determine the amount of leachate generated as a result of precipitation infiltration into the MSWLF unit or all the MSWLF units: Average monthly temperature, average monthly precipitation, evaporation, evapotranspiration which considers the vegetation type and root zone depth, surface/cover soil conditions and their relation to precipitation runoff which must account for the surface conditions and soil moisture holding capacity and all other sources of moisture contribution to the landfill;

(II) Liner and leachate collection system efficiencies that must be calculated using an appropriate analytical or numer-

ical assessment. The factors to be considered in the calculation of collection system efficiency must include, at a minimum, the saturated hydraulic conductivity of the liner, the liner thickness, the saturated hydraulic conductivity of the leachate collection system, the leachate collection system porosity, the base slope of the liner and leachate collection and removal system interface, the maximum flow distance across the liner and leachate collection and removal system interface to the nearest leachate collection pipe, the estimated leachate generation quantity as computed in accordance with the requirements of (c)(iii)(E)(I) of this subsection; and

(III) Predictions of the static head of leachate on the liners, volume of leachate to be collected, and the volume of leachate that may permeate through the entire liner system, all on a monthly basis. Information gained from the collection efficiency calculations required in (c)(iii)(E)(I) and (II) of this subsection must be used to make these predictions. This assessment also must address the amount of leachate expected to pass through the liner system in gallons per acre per day (liters per square meter per day).

(d) Discuss the closure and post-closure maintenance and operation of the facility which must include, but not be limited to:

(i) A closure design consistent with the requirements of WAC 173-351-500;

(ii) A post-closure water quality monitoring program consistent with the requirements of WAC 173-351-400 and 173-351-500;

(iii) An operation and closure plan for the leachate collection, treatment, and storage facilities consistent with the requirements of this regulation and chapter 173-350 WAC ((~~173-304-430~~)); ((~~and~~))

(iv) An estimate of the time required following closure of each MSWLF unit or all MSWLF units to meet the criteria in WAC 173-351-500 (2)(b)(iii); and

(v) A discussion of the future use of the facility, including the specific proposed or alternative uses during the post-closure period. Future uses must not adversely affect the final cover system. See WAC 173-351-500 (2)(c)(iii).

(e) Appendices must be submitted as part of an engineering report ((~~submitted~~)) with an application to construct a new or laterally expanded MSWLF unit and must contain:

(i) Appropriate charts and graphs;

(ii) Copies of record forms used at the MSWLF unit;

(iii) Test pit logs, soil boring logs, and geological information (such as stratigraphic sections, geophysical and geochemical surveys, and water quality analyses);

(iv) Engineering calculations (including the raw data from which they were made);

(v) Other supporting data, including literature citations.

(6) Construction quality assurance and construction quality control plans.

The construction quality assurance (QA) and construction quality control (QC) plan must address the construction of the MSWLF unit according to the designs set forth in chapter 173-351 WAC. (Construction QA and construction QC are defined in WAC 173-351-100.) The owner or operator may submit separate construction QA plans and construction QC plans. For each ((~~specified~~)) phase of construction, these plans must include((~~, but not be limited to~~)):

(a) A delineation of ((~~the~~)) responsibilities for the QA management organization and the QC management organization, including the chain of command of the QA inspectors and contractors and the QC inspectors and contractors; quality assurance ((~~shall~~)) must be performed by a third party organization that is independent of the landfill owner/operator/contractor.

(b) A description of the required level of experience and training for the contractor, his/her crew, and QA and QC inspectors for every ((~~major~~)) phase of construction in sufficient detail to demonstrate that the approved installation methods and procedures will be properly implemented; and

(c) A description of the QA and QC testing protocols for every major phase of construction, which must include, at a minimum, the frequency of inspection, field testing, sampling for laboratory testing, the sampling and field testing procedures and equipment to be utilized, the calibration of field testing equipment, the frequency of performance audits, the sampling size, the laboratory procedures to be utilized, the calibration of laboratory equipment and QA/QC of laboratory procedures, the limits for test failure, and a description of the corrective procedures to be used upon test failure.

Note: It is intended that owners or operators will select and pay for the independent third party construction quality assurance firm, who will report to the owner or operator.

(7) Signature and verification of applications.

(a) All applications for permits must be accompanied by evidence of authority to sign the application and must be signed by the owner or operator as follows:

(i) In the case of corporations, by a duly authorized principal executive officer of at least the level of vice-president; in the case of a partnership or limited partnership, by:

(ii) A general partner;

(iii) Proprietor; or

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

(v) In the case of a municipal, state, or other governmental entity, by a duly authorized principal executive officer or elected official.

(b) Applications must be sworn to by, or on behalf of, the owner or operator, in respect to the veracity all statements therein; or must bear an executed statement by, or on behalf of, the owner or operator to the effect that false statements made therein are made under penalty of perjury.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-740 Permit issuance criteria. The jurisdictional health department may issue, reissue, or modify a MSWLF permit to a facility, only if:

(1) The application's engineering and hydrogeological data and construction plans and specifications required by this regulation ((~~pertaining to such a MSWLF unit or MSWLF units substantiate~~)) demonstrate that the proposed MSWLF unit or MSWLF units meets the requirements of this regulation;

(2) The application demonstrates the facility's ability to operate and close in accordance with the requirements of this regulation;

(3) The application demonstrates the facility's ability to conduct post-closure activities in accordance with the requirements of this regulation; ((~~and a form of surety or financial responsibility for post-closure activities has been filed with the jurisdictional health department; and~~))

(4) The owner or operator has established a financial assurance mechanism meeting the requirements of this regulation and has submitted, as applicable:

(a) A copy of the ordinance establishing the reserve account; or

(b) The original signed documents for trust funds, surety bonds, or letters of credit for closure and post-closure financial assurance; and

(5) The application demonstrates the facility's consistency with the local solid waste management plan in effect at the time of application.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-750 Permit provisions. (1) Mitigation of adverse impacts. The jurisdictional health department may impose conditions in each permit, to assure mitigation of adverse environmental impacts pursuant to SEPA, chapter 43.21C RCW and to ((~~insure~~)) ensure compliance with the requirements ((~~identified in WAC 173-351-130 through 173-351-600, with the applicable sections pertaining to such a MSWLF unit or all MSWLF units,~~)) of this regulation and with other applicable laws and regulations.

(2) Transferability.

(a) All permits issued pursuant to this regulation are transferable only upon prior written approval of the jurisdictional health department and a demonstration that the prospective transferee will be able to comply with applicable laws and regulations, permit conditions, and other requirements to which the prospective transferor is subject.

(b) Upon transfer of ownership of all or part of a facility, a provision must be included in the property deed indicating the period of time during which the facility has been disposing of solid waste, a description of the solid waste contained within, and the fact that the records for the facility have been filed with the jurisdictional health department. The deed also must reference a map, which must be filed with the county clerk, showing the limits of the active areas as defined in WAC 173-351-100.

(3) Duration of permits. The jurisdictional health department must specify the duration of the MSWLF permit ((~~not to exceed ten years~~)). Except as provided in WAC 173-351-710(5), permits must be renewed ((~~annually~~)) at least every five years on a date established by the jurisdictional health department. If a permit is to be renewed for longer than one year, the jurisdictional health department may hold a public hearing before making a decision. Permits must be renewed according to WAC ((~~173-351-730(3)~~)) 173-351-710(5) or 173-351-720(5), and reissued according to WAC 173-351-720(((~~(6)~~))) (7).

(4) Preconstruction review condition. The jurisdictional health department ((~~shall~~)) must include in each permit for a new MSWLF unit or lateral expansion a condition requiring the owner or operator((~~,~~)) to submit the following documents sixty days prior to beginning construction, and to obtain the jurisdictional health department's approval that the following documents conform ((~~with~~)) to the engineering report and with the requirements of this chapter:

(a) Final design drawings;

(b) Construction specifications; and

(c) A construction quality assurance manual for the following MSWLF components:

(i) Bottom liner;

(ii) Leachate collection and removal system;

(iii) Landfill gas control system;

(iv) Leachate and landfill gas condensate treatment and disposal system; and

(v) Final cover system.

(5) Supervision and certification or declaration of construction. The construction of a MSWLF unit must be undertaken:

(a) Under the supervision of an individual licensed to practice engineering in the state of Washington; and

(b) In conformance with the construction quality assurance plan of WAC 173-351-730(6).

(6) Preoperation review conditions. Each permit issued under this chapter for a new MSWLF unit or lateral expansion ((~~shall~~)) must contain a condition requiring that upon completion of construction, the licensed ((~~engineered~~)) engineer who supervised construction ((~~shall~~)) must certify or declare in writing that the construction is in accordance with the terms of the applicable permit and tested in accordance with construction quality assurance plans of WAC 173-351-730(6). Except as specified elsewhere in this regulation, this certification or declaration must be submitted to the jurisdictional health department within three months after completion of construction and must include recorded construction drawings and specifications. The owner or operator must notify the jurisdictional health department, in writing, of the date when solid waste will be first received at the MSWLF unit.

(7) Cessation of construction or operation activities. If construction or operation activities started under a permit issued pursuant to this chapter cease for a period of twelve consecutive months, the jurisdictional health department may in its discretion revoke the permit. The jurisdictional health department ((~~shall~~)) must provide notice to the owner or operator in writing explaining the reasons for revocation. The jurisdictional health department ((~~shall~~)) must not revoke a permit where the cessation of construction or operation is caused by factors beyond the reasonable control of the permittee or when such cessation is in accordance with the provisions of the permit.

(8) Design volume capacity and construction. Every MSWLF permit must ((~~set forth~~)) specify the facility's approved design volume capacity and identify the extent of each permitted MSWLF unit and the specific time frames for construction of the first MSWLF unit and estimated time frames for construction of subsequent MSWLF units.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-760 Appeals. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it ((~~shall~~)) must, upon request of the application or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request ((~~therefor~~)) is made. Notice of the hearing ((~~shall~~)) must be given to all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing the health officer ((~~shall~~)) must notify the applicant or the holder of the permit in writing of ((~~his~~)) the determination ((~~thereof~~)). Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board ((~~shall~~)) will hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-990 Appendices.

APPENDIX I((~~:~~))
Appendix I - Constituents for Detection Monitoring

	COMMON NAME((~~2~~)) 1	CAS RN((~~3~~)) 2
Inorganic Constituents		
1)	Antimony	(((~~Dissolved~~)) Total)
2)	Arsenic	(((~~Dissolved~~)) Total)
3)	Barium	(((~~Dissolved~~)) Total)
4)	Beryllium	(((~~Dissolved~~)) Total)
5)	Cadmium	(((~~Dissolved~~)) Total)
6)	Chromium	(((~~Dissolved~~)) Total)
7)	Cobalt	(((~~Dissolved~~)) Total)
8)	Copper	(((~~Dissolved~~)) Total)
9)	Lead	(((~~Dissolved~~)) Total)
10)	Nickel	(((~~Dissolved~~)) Total)
11)	Selenium	(((~~Dissolved~~)) Total)
12)	Silver	(((~~Dissolved~~)) Total)
13)	Thallium	(((~~Dissolved~~)) Total)
14)	Vanadium	(((~~Dissolved~~)) Total)
15)	Zinc	(((~~Dissolved~~)) Total)
16)	Nitrate	
Organic Constituents		
17)	Acetone	67-64-1
18)	Acrylonitrile	107-13-1
19)	Benzene	71-43-2
20)	Bromochloromethane	74-97-5
21)	Bromodichloromethane	75-27-4
Inorganic Constituents		
22)	Bromoform; Tribromomethane	75-25-2
23)	Carbon disulfide	75-15-0
24)	Carbon tetrachloride	56-23-5
25)	Chlorobenzene	108-90-7
26)	Chloroethane; Ethyl chloride	75-00-3
27)	Chloroform; Trichloromethane	67-66-3
28)	Dibromochloromethane; Chlorodibromomethane	124-48-1
29)	1,2-Dibromo-3-chloropropane; DBCP	96-12-8
30)	1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
31)	o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
32)	p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
33)	trans-1,4-Dichloro-2-butene	110-57-6
34)	1,1-Dichloroethane; Ethylidene chloride	75-34-3
35)	1,2-Dichloroethane; Ethylene dichloride	107-06-2
36)	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
37)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
38)	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
39)	1,2-Dichloropropane; Propylene dichloride	78-87-5
40)	cis-1,3-Dichloropropene	10061-01-5
41)	trans-1,3-Dichloropropene	10061-02-6
42)	Ethylbenzene	100-41-4
43)	2-Hexanone; Methyl butyl ketone	((~~591-73-6~~)) 591-78-6
44)	Methyl bromide; Bromomethane	74-83-9
45)	Methyl chloride; Chloromethane	74-87-3
46)	Methylene bromide; Dibromomethane	74-95-3
47)	Methylene chloride; Dichloromethane	75-09-2
48)	Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
49)	Methyl iodide; Iodomethane	74-88-4
50)	4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
51)	Styrene	100-42-5
52)	1,1,1,2-Tetrachloroethane	630-20-6
53)	1,1,2,2-Tetrachloroethane	79-34-5
54)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4

	COMMON NAME((~~2~~)) 1	CAS RN((~~3~~)) 2
Inorganic Constituents		
55)	Toluene	108-88-3
56)	1,1,1-Trichloroethane; Methyl chloroform	71-55-6
57)	1,1,2-Trichloroethane	79-00-5
58)	Trichloroethylene; Trichloroethene	79-01-6
59)	Trichlorofluoromethane; CFC-11	75-69-4
60)	1,2,3-Trichloropropane	96-18-4
61)	Vinyl acetate	108-05-4
62)	vinyl chloride	75-01-4
63)	Xylenes	1330-20-7

1 ((~~This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.~~

~~2~~)) Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

((~~3~~)) 2 Chemical Abstracts Service registry number.

APPENDIX II
Groundwater QUALITY PARAMETERS

Field Parameters

pH
specific conductance
temperature
static water level

Geochemical Indicator Parameters

Calcium (Ca)	Sodium (Na)
Bicarbonate (HCO_3)	Chloride (Cl)
Magnesium (Mg)	Potassium (K)
Sulfate (SO_4)	Alkalinity (as Ca CO_3)
Total suspended solids (TSS)	Iron (Fe) (Dissolved)
	Manganese (Mn) (Dissolved)

Leachate Indicators

Ammonia (NH_3-N)
Total Organic Carbon (TOC)
Total Dissolved Solids (TDS)

APPENDIX III
List of Hazardous Inorganic and Organic Constituents.((~~4~~))

Common Name((~~2~~))1 (((~~(mg/L)~~~~6~~))	**CAS RN((~~3~~)) 2**	**Chemical abstracts service index name((~~4~~)) 3**	((**~~Suggested methods~~~~5~~**	**~~PQL~~**))
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))
Acenaphthylene	208-96-8	Acenaphthylene	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))
Acetone	67-64-1	2-Propanone	((~~8260~~	~~100~~))
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	((~~8015~~	~~100~~))
Acetophenone	98-86-2	Ethanone, 1-phenyl-	((~~8270~~	~~10~~))
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	((~~8270~~	~~20~~))
Acrolein	107-02-8	2-Propenal	((~~8030~~ ~~8260~~	~~5~~ ~~100~~))
Acrylonitrile	107-13-1	2-Propenenitrile	((~~8030~~ ~~8260~~	~~5~~ ~~200~~))
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a-hexahydro- (1α,4α, 4aβ,5α,8α,8aβ)-	((~~8080~~ ~~8270~~	~~0.05~~ ~~10~~))
Allyl chloride	107-05-1	1-Propene, 3-chloro-	((~~8010~~ ~~8260~~	~~5~~ ~~10~~))
4-Aminobiphenyl	92-67-1	[1,1 1 -Biphenyl]-4-amine	((~~8270~~	~~20~~))
Anthracene	120-12-7	Anthracene	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Antimony	(((~~Dissolved~~)) Total)	Antimony	((~~6010 7040 7041~~	~~300 2000 30~~))
Arsenic	(((~~Dissolved~~)) Total)	Arsenic	((~~6010 7060 7061~~	~~500 10 20~~))
Barium	(((~~Dissolved~~)) Total)	Barium	((~~6010 7080~~	~~20 1000~~))
Benzene	71-43-2	Benzene	((~~8020 8021 8260~~	~~2 0.1 5~~))
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	((~~8100 8270~~	~~200 10~~))
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	((~~8100 8270~~	~~200 10~~))
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	((~~8100 8270~~	~~200 10~~))
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	((~~8100 8270~~	~~200 10~~))
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	((~~8100 8270~~	~~200 10~~))
Benzyl alcohol	100-51-6	Benzenemethanol	((~~8270~~	~~20~~))
Beryllium	(((~~Dissolved~~)) Total)	Beryllium	((~~6010 7090 7091~~	~~3 50 2~~))
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	((~~8080 8270~~	~~0.05 10~~))
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	((~~8080 8270~~	~~0.05 20~~))
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	((~~8080 8270~~	~~0.1 20~~))
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	((~~8080 8270~~	~~0.05 20~~))
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1 1 -[methylenebis(oxy)]bis[2-chloro-	((~~8110 8270~~	~~5 10~~))
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1 1 -oxybis[2-chloro-	((~~8110 8270~~	~~3 10~~))
Bis-(2-chloro-1-methylethyl) ether; 2,2 1 - Dichlorodiisopropyl ether; DCIP, See note ((~~7~~)) 4	108-60-1	Propane, 2,2 1 -oxybis[1-chloro-	((~~8110 8270~~	~~10 10~~))
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	((~~8060~~	~~20~~))
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	((~~8021 8260~~	~~0.1 5~~))
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	((~~8010 8021 8260~~	~~1 0.2 5~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	((~~8010~~ ~~8021~~ ~~8260~~	~~2~~ ~~15~~ ~~5~~))
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	((~~8110~~ ~~8270~~	~~25~~ ~~10~~))
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	((~~8060~~ ~~8270~~	~~5~~ ~~10~~))
Cadmium	(((~~Dissolved~~)) Total)	Cadmium	((~~6010~~ ~~7130~~ ~~7131~~	~~40~~ ~~50~~ ~~1~~))
Carbon disulfide	75-15-0	Carbon disulfide	((~~8260~~	~~100~~))
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.1~~ ~~10~~))
Chlordane	See Note ((~~8~~)) 5	4,7-Methano-1H-indene, 1,2,4,5, 6,7,8,8-octachloro-2,3,3a,4,7, 7a-hexahydro-	((~~8080~~ ~~8270~~	~~0.1~~ ~~50~~))
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	((~~8270~~	~~20~~))
Chlorobenzene	108-90-7	Benzene, chloro-	((~~8010~~ ~~8020~~ ~~8021~~ ~~8260~~	~~2~~ ~~2~~ ~~0.1~~ ~~5~~))
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester	((~~8270~~	~~10~~))
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	((~~8040~~ ~~8270~~	~~5~~ ~~20~~))
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~5~~ ~~1~~ ~~10~~))
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~0.5~~ ~~0.2~~ ~~5~~))
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	((~~8120~~ ~~8270~~	~~10~~ ~~10~~))
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	((~~8040~~ ~~8270~~	~~5~~ ~~10~~))
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	((~~8110~~ ~~8270~~	~~40~~ ~~10~~))
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	((~~8010~~ ~~8260~~	~~50~~ ~~20~~))
Chromium	(((~~Dissolved~~)) Total)	Chromium	((~~6010~~ ~~7190~~ ~~7191~~	~~70~~ ~~500~~ ~~10~~))
Chrysene	218-01-9	Chrysene	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))
Cobalt	(((~~Dissolved~~)) Total)	Cobalt	((~~6010~~ ~~7200~~ ~~7201~~	~~70~~ ~~500~~ ~~10~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Copper	(((~~Dissolved~~)) Total)	Copper	((~~6010~~ ~~7210~~ ~~7211~~	~~60~~ ~~200~~ ~~10~~))
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	((~~8270~~	~~10~~))
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	((~~8270~~	~~10~~))
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	((~~8270~~	~~10~~))
Cyanide	57-12-5	Cyanide	((~~9010~~	~~200~~))
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	((~~8150~~	~~10~~))
4,4 ((~~1~~))'-DDD	72-54-8	Benzene 1,1 1 -(2,2-dichloroethylidene)bis[4-chloro-	((~~8080~~ ~~8270~~	~~0.1~~ ~~10~~))
4,4 ((~~1~~))'-DDE	72-55-9	Benzene, 1,1 1 -(dichloroethyenylidene)bis[4-chloro-	((~~8080~~ ~~8270~~	~~0.05~~ ~~10~~))
4,4 ((~~1~~))'-DDT	50-29-3	Benzene, 1,1 1 -(2,2,2-trichloroethylidene)bis[4-chloro-	((~~8080~~ ~~8270~~	~~0.1~~ ~~10~~))
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester	((~~8270~~	~~10~~))
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))
Dibenzofuran	132-64-9	Dibenzofuran	((~~8270~~	~~10~~))
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.3~~ ~~5~~))
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibrome-3-chloro-	((~~8011~~ ~~8021~~ ~~8260~~	~~0.1~~ ~~30~~ ~~25~~))
1,2-Dibromoethane; Ethylene dribromide; EDB	106-93-4	Ethane, 1,2-dibromo-	((~~8011~~ ~~8021~~ ~~8260~~	~~0.1~~ ~~10~~ ~~5~~))
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	((~~8060~~ ~~8270~~	~~5~~ ~~10~~))
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	((~~8010~~ ~~8020~~ ~~8021~~ ~~8120~~ ~~8260~~ ~~8270~~	~~2~~ ~~5~~ ~~0.5~~ ~~10~~ ~~5~~ ~~10~~))
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-	((~~8010~~ ~~8020~~ ~~8021~~ ~~8120~~ ~~8260~~ ~~8270~~	~~5~~ ~~5~~ ~~0.2~~ ~~10~~ ~~5~~ ~~10~~))

Common Name((~~2~~))1 (((~~mg/L~~)6))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	((~~8010~~ ~~8020~~ ~~8021~~ ~~8120~~ ~~8260~~ ~~8270~~	~~2~~ ~~5~~ ~~0.1~~ ~~15~~ ~~5~~ ~~10~~))
3,3 ((~~1~~))'-Dichlorobenzidine	91-94-1	[1,1 1-Biphenyl]-4,4 1-diamine, 3,3 1-dichloro-	((~~8270~~	~~20~~))
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	((~~8260~~	~~100~~))
Dichlorodifluoromethane; CFC 12;	75-71-8	Methane, dichlorodifluoro-	((~~8021~~ ~~8260~~	~~0.5~~ ~~5~~))
1,1-Dichloroethane; Ethyldidene chloride	75-34-3	Ethane, 1,1-dichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.5~~ ~~5~~))
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~0.5~~ ~~0.3~~ ~~5~~))
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.5~~ ~~5~~))
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	((~~8021~~ ~~8260~~	~~0.2~~ ~~5~~))
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	((~~8010~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.5~~ ~~5~~))
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	((~~8040~~ ~~8270~~	~~5~~ ~~10~~))
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	((~~8270~~	~~10~~))
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~0.5~~ ~~0.05~~ ~~5~~))
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	((~~8021~~ ~~8260~~	~~0.3~~ ~~5~~))
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	((~~8021~~ ~~8260~~	~~0.5~~ ~~15~~))
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	((~~8021~~ ~~8260~~	~~0.2~~ ~~5~~))
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	((~~8010~~ ~~8260~~	~~20~~ ~~10~~))
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	((~~8010~~ ~~8260~~	~~5~~ ~~10~~))
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexa, chloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β, 6aα,7β,7aα)-	((~~8080~~ ~~8270~~	~~0.05~~ ~~10~~))
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	((~~8060~~ ~~8270~~	~~5~~ ~~10~~))
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	((~~8141~~ ~~8270~~	~~5~~ ~~20~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S-[2-(methylamino)-2-oxo-ethyl] ester	((~~8141 8270~~	~~3 20~~))
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	((~~8270~~	~~10~~))
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	((~~8270~~	~~10~~))
3,3 ((~~1~~))'-Dimethylbenzidine	119-93-7	[1,1 1 -Biphenyl]-4,4 1 -diamine, 3,3 1 -dimethyl-	((~~8270~~	~~10~~))
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	((~~8040 8270~~	~~5 10~~))
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	((~~8060 8270~~	~~5 10~~))
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	((~~8270~~	~~20~~))
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro	((~~8040 8270~~	~~150 50~~))
2,4-Dinitrophenol;	51-28-5	Phenol, 2,4-dinitro-	((~~8040 8270~~	~~150 50~~))
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	((~~8090 8270~~	~~0.2 10~~))
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	((~~8090 8270~~	~~0.1 10~~))
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	((~~8150 8270~~	~~1 20~~))
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	((~~8060 8270~~	~~30 10~~))
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	((~~8270~~	~~10~~))
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	((~~8140 8141 8270~~	~~2 0.5 10~~))
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa-chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,	((~~8080 8270~~	~~0.1 20~~))
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10, 10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα, 6β,9β,9aα)-	((~~8080 8270~~	~~0.05 20~~))
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10, 10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-,3-3-dioxide	((~~8080 8270~~	~~0.5 10~~))
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα, 2β,2aβ,3α,6α, 6aβ,7β,7aα)-	((~~8080 8270~~	~~0.1 20~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β, 2aβ,4β,4aβ,5β,6aβ,6bβ,7R*)-	((~~8080 8270~~	~~0.2 10~~))
Ethylbenzene	100-41-4	Benzene, ethyl-	((~~8020 8221 8260~~	~~2 0.05 5~~))
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	((~~8015 8260 8270~~	~~5 10 10~~))
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	((~~8270~~	~~20~~))
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester	((~~8270~~	~~20~~))
Fluoranthene	206-44-0	Fluoranthene	((~~8100 8270~~	~~200 10~~))
Fluorene	86-73-7	9H-Fluorene	((~~8100 8270~~	~~200 10~~))
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	((~~8080 8270~~	~~0.05 10~~))
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα, 1bβ, 2α, 5α, 5aβ, 6β, 6aα)	((~~8080 8270~~	~~1 10~~))
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	((~~8120 8270~~	~~0.5 10~~))
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	((~~8021 8120 8260 8270~~	~~0.5 5 10 10~~))
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	((~~8120 8270~~	~~5 10~~))
Hexachloroethane	67-72-1	Ethane, hexachloro-	((~~8120 8260 8270~~	~~0.5 10 10~~))
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	((~~8270~~	~~10~~))
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	((~~8260~~	~~50~~))
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	((~~8100 8270~~	~~200 10~~))
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	((~~8015 8240~~	~~50 100~~))
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10- hexachloro-1,4,4a,5,8,8a hexahydro- (1α,4α,4aβ, 5β,8β,8aβ)-	((~~8270 8260~~	~~20 10~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	((~~8090~~ ~~8270~~	~~60~~ ~~10~~))
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	((~~8270~~	~~10~~))
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1, 1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	((~~8270~~	~~20~~))
Lead	(((~~Dissolved~~)) Total)	Lead	((~~6010~~ ~~7420~~ ~~7421~~	~~400~~ ~~1000~~ ~~10~~))
Mercury	(Total)	Mercury	((~~7470~~	~~2~~))
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	((~~8015~~ ~~8260~~	~~5~~ ~~100~~))
Methapyrilene	91-80-5	1,2-Ethanediamine, N.N-dimethyl-N 1 -2-pyridinyl-N1/2-thienylmethyl)-	((~~8270~~	~~100~~))
Methoxychlor	72-43-5	Benzene,1,1 1 -(2,2,2, trichloroethylidene)bis[4-methoxy-	((~~8080~~ ~~8270~~	~~2~~ ~~10~~))
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	((~~8010~~ ~~8021~~	~~20~~ ~~10~~))
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	((~~8010~~ ~~8021~~	~~1~~ ~~0.3~~))
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	((~~8270~~	~~10~~))
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	((~~8015~~ ~~8260~~	~~10~~ ~~100~~))
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	((~~8010~~ ~~8260~~	~~40~~ ~~10~~))
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	((~~8015~~ ~~8260~~	~~2~~ ~~30~~))
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	((~~8270~~	~~10~~))
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	((~~8270~~	~~10~~))
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	((~~8140~~ ~~8141~~ ~~8270~~	~~0.5~~ ~~1~~ ~~10~~))
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	((~~8015~~ ~~8260~~	~~5~~ ~~100~~))
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	((~~8010~~ ~~8021~~ ~~8260~~	~~15~~ ~~20~~ ~~10~~))
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~5~~ ~~0.2~~ ~~10~~))
Naphthalene	91-20-3	Naphthalene	((~~8021~~ ~~8100~~ ~~8260~~ ~~8270~~	~~0.5~~ ~~200~~ ~~5~~ ~~10~~))
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	((~~8270~~	~~10~~))
1-Naphthylamine	134-32-7	1-Naphthalenamine	((~~8270~~	~~10~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
2-Naphthylamine	91-59-8	2-Naphthalenamine	((~~8270~~	~~10~~))
Nickel	(Total)	Nickel	((~~6010~~ ~~7520~~	~~150~~ ~~400~~))
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	((~~8270~~	~~50~~))
m-Nitroaniline; 3-Nitroanile	99-09-2	Benzenamine, 3-nitro-	((~~8270~~	~~50~~))
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro	((~~8270~~	~~20~~))
Nitrobenzene	98-95-3	Benzene, nitro-	((~~8090~~ ~~8270~~	~~40~~ ~~10~~))
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	((~~8040~~ ~~8270~~	~~5~~ ~~10~~))
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	((~~8040~~ ~~8270~~	~~10~~ ~~50~~))
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	((~~8270~~	~~10~~))
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	((~~8270~~	~~20~~))
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	((~~8070~~	~~2~~))
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	((~~8070~~	~~5~~))
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-	((~~8070~~	~~10~~))
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	((~~8270~~	~~10~~))
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	((~~8270~~	~~20~~))
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	((~~8270~~	~~40~~))
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	((~~8270~~	~~10~~))
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	((~~8141~~ ~~8270~~	~~0.5~~ ~~10~~))
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	((~~8270~~	~~10~~))
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	((~~8270~~	~~20~~))
Pentachlorophenol	87-86-5	Phenol, pentachloro-	((~~8040~~ ~~8270~~	~~5~~ ~~50~~))
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenl)	((~~8270~~	~~20~~))
Phenanthrene	85-01-8	Phenanthrene	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))
Phenol	108-95-2	Phenol	((~~8040~~	~~1~~))
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	((~~8270~~	~~10~~))
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl] ester	((~~8140~~ ~~8141~~ ~~8270~~	~~2~~ ~~0.5~~ ~~10~~))
Polychlorinated biphenyls; PCBs; Aroclors	See Note ((~~9~~)) 6	1,1'-Biphenyl, chloro derivatives	((~~8080~~ ~~8270~~	~~50~~ ~~200~~))
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	((~~8270~~	~~10~~))
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	((~~8015~~ ~~8260~~	~~60~~ ~~150~~))
Pyrene	129-00-0	Pyrene	((~~8100~~ ~~8270~~	~~200~~ ~~10~~))
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	((~~8270~~	~~10~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Selenium	(((~~Dissolved~~)) Total)	Selenium	((~~6010~~ ~~7740~~ ~~7741~~	~~750~~ ~~20~~ ~~20~~))
Silver	(((~~Dissolved~~)) Total)	Silver	((~~6010~~ ~~7760~~ ~~7761~~	~~70~~ ~~100~~ ~~10~~))
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	((~~8150~~	~~2~~))
Styrene	100-42-5	Benzene, ethenyl-	((~~8020~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.1~~ ~~10~~))
Sulfide	18496-25-8	Sulfide	((~~9030~~	~~4000~~))
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	((~~8150~~	~~2~~))
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	((~~8270~~	~~10~~))
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~5~~ ~~0.05~~ ~~5~~))
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~0.5~~ ~~0.1~~ ~~5~~))
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~0.5~~ ~~0.5~~ ~~5~~))
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	((~~8270~~	~~10~~))
Thallium	(((~~Dissolved~~)) Total)	Thallium	((~~6010~~ ~~7840~~ ~~7841~~	~~400~~ ~~1000~~ ~~10~~))
Tin	(((~~Dissolved~~)) Total)	Tin	((~~6010~~	~~40~~))
Toluene	108-88-3	Benzene, methyl-	((~~8020~~ ~~8021~~ ~~8260~~	~~2~~ ~~0.1~~ ~~5~~))
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	((~~8270~~	~~10~~))
Toxaphene	See Note ((~~10~~)) 7	Toxaphene	((~~8080~~	~~2~~))
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	((~~8021~~ ~~8120~~ ~~8260~~ ~~8270~~	~~0.3~~ ~~0.5~~ ~~10~~ ~~10~~))
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~0.3~~ ~~0.3~~ ~~5~~))
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	((~~8010~~ ~~8260~~	~~0.2~~ ~~5~~))
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~1~~ ~~0.2~~ ~~5~~))

Common Name((~~2~~))1 (((~~mg/L~~)~~6~~))	CAS RN((~~3~~)) 2	Chemical abstracts service index name((~~4~~)) 3	((~~Suggested methods~~5	~~PQL~~))
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	((~~8010~~ ~~8021~~ ~~8260~~	~~10~~ ~~0.3~~ ~~5~~))
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	((~~8270~~	~~10~~))
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	((~~8040~~ ~~8270~~	~~5~~ ~~10~~))
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~10~~ ~~5~~ ~~15~~))
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethyles-ter	((~~8270~~	~~10~~))
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	((~~8270~~	~~10~~))
Vanadium	(((~~Dissolved~~)) Total)	Vanadium	((~~6010~~ ~~7910~~ ~~7911~~	~~80~~ ~~2000~~ ~~40~~))
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	((~~8260~~	~~50~~))
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	((~~8010~~ ~~8021~~ ~~8260~~	~~2~~ ~~0.4~~ ~~10~~))
Xylene (total)	See Note ((~~11~~)) 8	Benzene, dimethyl-	((~~8020~~ ~~8021~~ ~~8260~~	~~5~~ ~~0.2~~ ~~5~~))
Zinc	(((~~Dissolved~~)) Total)	Zinc	((~~6010~~ ~~7950~~ ~~7951~~	~~20~~ ~~50~~ ~~0.5~~))

Notes:

1 ((~~The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6. Also, note that the state groundwater quality criteria, chapter 173-200 WAC, takes precedence over these recommended PQL's.~~

~~2~~)) Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

((~~3~~)) 2 Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

((~~4~~)) 3 CAS index are those used in the 9th Collective Index.

((~~5 Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.~~

~~6 Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in groundwaters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.~~))

((~~7~~)) 4 This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2"-oxybis[2-chloro- (CAS RN 39638-32-9).

((~~8~~)) 5 Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). ((~~PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.~~))

((~~9~~)) 6 Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). ((~~The PQL shown is an average value for PCB congeners.~~))

((~~10~~)) 7 Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

((~~11~~)) 8 Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). ((~~PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m-or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.~~

~~**APPENDIX IV**~~
~~**PARAMETERS FOR LEACHATE ANALYSIS**~~

~~Appendix I[1] Parameters~~
~~Appendix II Parameters~~
~~Nitrite~~
~~Total Colliform~~
~~COD~~
~~BOD~~
~~Cyanide~~

~~1 All metals analysis should be for total recoverable metals, for the leachate analysis only.~~

~~Important Note: All other appendices require dissolved metals (field-filtration for metals).~~))

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 12-23-015
PERMANENT RULES
HORSE RACING COMMISSION

[Filed November 9, 2012, 1:48 p.m., effective December 10, 2012]

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

Purpose: Changes the way labor and industries premiums are calculated and collected along with penalties for reporting and payment violations.

Citation of Existing Rules Affected by this Order: Amending Title 260 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-20-061 on October 2, 2012.

Changes Other than Editing from Proposed to Adopted Version: Chapter 260-36 WAC, Page 1, subsection (3) the word or was inserted. Page 2, subsection (5) the WAC was corrected to WAC 260-36-250 (4)(a). Page 10, subsection (3)(a) the word training was changed to trainer.

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 1, Amended 7, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 9, 2012.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-11-115, filed 5/18/07, effective 6/18/07)

WAC 260-20-090 Association security. (1) A racing association conducting a race meet must maintain security controls over its grounds.

(2) An association will prevent access to, and will remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(3) Class A or B racing associations must provide continuous security in the stable area during all times that horses are stabled on the grounds. An association will require any person entering the stable area to display a valid license or credential issued by the commission or a pass issued by the association.

(4) Class A or B racing associations must keep a written record, on a form approved by the commission, of all horses admitted to or leaving the stable areas. For horses admitted to the stable areas the log must contain the date, time, names of horses, and barn or name of trainer they are being delivered to. For horses leaving the stable areas the log must contain the date, time, name of horses, and barn or name of trainer they are leaving from. A copy of the completed form(s) must be provided to the commission on a weekly basis. The original log is subject to inspection at any time by the commission.

(5) All persons and businesses transporting horses on and off the grounds of a racing association are responsible to provide association security, and if applicable, the commission with the names of any horses delivered to or leaving the grounds and the trainer responsible.

(6) Class A or B racing associations must provide fencing around the stable area in a manner that is approved by the commission.

((~~(5)~~)) (7) Not later than twenty-four hours after an incident occurs requiring the attention of security personnel, the

chief of security must deliver to commission security a written report describing the incident, which may be forwarded to the stewards for disciplinary action. The report must include the name of each individual involved in the incident and the circumstances of the incident.

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

WAC 260-36-062 Fitness to participate. (1) All applicants for a jockey, apprentice jockey, exercise rider, pony rider or outrider license must certify on their application that they are physically fit to ride.

(2) During the conduct of a race meet, if the board of stewards finds that a threat to the public health, safety or welfare requires emergency action, the board of stewards may require a jockey, apprentice jockey, exercise rider, pony rider or outrider to provide a physician's written statement verifying fitness to ride before being allowed to ride in a race or on the grounds of the racing association.

(3) All applicants for a groom, assistant trainer, or other employees of the trainer not on horseback, must certify on their application that they are physically fit to perform the duties of the position they hold.

(4) If, during the year of license, a groom, assistant trainer, or other employee of the trainer becomes injured, they will report the injury to the trainer, who must in turn report the injury to the board of stewards or executive secretary. If the injury adversely impacts an employee's ability to perform their duties, the board of stewards or executive secretary may require the employee provide a physician's written statement verifying fitness to perform their duties before the employee will be allowed to return to work on or off the grounds of the racing association.

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

WAC 260-36-080 Duration of a license. (1) Every license issued by the commission will be for a term not exceeding one year. Licenses expire on December 31st of each year except as otherwise provided in this rule.

(2) Licenses issued to employees and volunteers of a racing association will be for a term of one year and expire on the last day of February of each year.

(3) A license will be considered expired as of the end of the month in which the final live race day of the year is run, unless extended as provided in subsection (4) of this section, or the date a licensee is no longer performing the activities for which he or she was licensed, or, if applicable, the date the licensee is no longer employed by the employer who hired the licensee. The commission or its designee may, at its sole discretion, reinstate such a license if the licensee is reemployed or begins performing the activities for which he or she was licensed prior to the end of the license period for which the license had been originally issued.

(4) All licenses issued to exercise riders - track, and pony riders - track will expire on the last live race day of the year. All licenses issued to trainers, assistant trainers, grooms, exercise riders - farm, and pony riders -farm, will expire at the end of the month in which the final live race day of the year the track is run, unless extended as provided in subsection (5) of this section.

(5) The license of trainers, assistant trainers, grooms, exercise riders - farm, and pony riders - farm may be extended if the trainer chooses to extend industrial insurance coverage as provided in WAC 260-36-250 (4)(a). In those cases, the license of the trainer and the trainer's employees will not expire as provided in subsection (4) of this section until industrial insurance coverage is no longer obtained or until December 31st, whichever comes first.

AMENDATORY SECTION (Amending WSR 10-21-055, filed 10/14/10, effective 11/14/10)

WAC 260-36-085 License and fingerprint fees. (1) The following are the license fees for any person actively participating in racing activities:

Apprentice jockey	$83.00
Assistant trainer	$40.00
Association employee((—)) - Management	$27.00
Association employee((—)) - Hourly/seasonal	$17.00
Association volunteer nonpaid	No fee
Authorized agent	$27.00
Clocker	$27.00
Exercise rider - Farm	$83.00
Exercise rider - Track	$83.00
Groom	$27.00
Honorary licensee	$17.00
Jockey agent	$83.00
Jockey	$83.00
Other	$27.00
Owner	$83.00
Pony rider - Farm	$83.00
Pony rider - Track	$83.00
Service employee	$27.00
Spouse groom	$27.00
Stable license	$51.00
Trainer	$83.00
Vendor	$127.00
Veterinarian	$127.00

(2) Exercise and pony riders.

(a) A person receiving an exercise rider - track license must first obtain an exercise rider - farm license if that person works off the grounds of a Washington race track. A person receiving a second exercise rider's license will not be charged an additional license fee for that second license.

(b) A person receiving a pony rider - track license must first obtain a pony rider - farm license if that person works off the grounds of a Washington race track. A person receiving a second pony rider's license will not be charged an additional license fee for that second license.

(3) In other cases, the license fee for multiple licenses may not exceed $127.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer ($83.00), exercise rider ($83.00), and pony rider ($83.00). The total license fee for these multiple licenses would only be $127.00.

Example two - A person applies for the following licenses: Owner ($83.00), trainer ($83.00) and exercise rider ($83.00). The total cost of the trainer and exercise rider license would be $127.00. The cost of the owner license ($83.00) would be added to the maximum cost of multiple licenses ($127.00) for a total license fee of $210.00.

Example three - A person applies for the following licenses: Owner ($83.00), vendor ($127.00), and exercise rider ($83.00). The license fees for owner ($83.00) and vendor ($127.00) are both added to the license fee for exercise rider ($83.00) for a total license fee of $293.00.

In addition to the above fees, except for association volunteers (nonpaid) at Class C race meets, a $10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

AMENDATORY SECTION (Amending WSR 12-03-077, filed 1/13/12, effective 2/13/12)

WAC 260-36-120 Denial, suspension, and revocation—Grounds. (1) The commission, executive secretary, or board of stewards may refuse to issue or may deny a license to an applicant, may modify or place conditions upon a license, may suspend or revoke a license issued, may order disciplinary measures, or may ban a person from all facilities under the commission's jurisdiction, if the applicant licensee, or other person:

(a) Has been convicted of any felony or gross misdemeanor crime;

(b) Is subject of current prosecution of any felony crime;

(c) Has any felony conviction under appeal;

(d) Has pending criminal charges;

(e) Has failed to meet the minimum qualifications required for the license for which they are applying;

(f) Has failed to disclose or states falsely any information required in the application;

(g) Has been found in violation of statutes or rules governing racing in this state or other jurisdictions;

(h) Has a proceeding pending to determine whether the applicant or licensee has violated the rules of racing in this state or other racing jurisdiction;

(i) Has been or is currently excluded from a racetrack at which parimutuel wagering on horse racing is conducted by a recognized racing jurisdiction;

(j) Has had a license denied by any racing jurisdiction;

(k) Is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or who may interfere or has interfered with the orderly conduct of a race meeting;

(l) Demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

(m) Has violated any of the alcohol or substance abuse provisions outlined in chapter 260-34 WAC;

(n) Has violated any of the provisions of chapter 67.16 RCW;

(o) Has violated any provisions of Title 260 WAC;

(p) Has association with persons of known disreputable character; ((~~or~~))

(q) Has not established the necessary skills or expertise to be qualified for a license as required by WAC 260-36-060; or

(r) Has committed any act with the outcome or intent of defrauding the industrial insurance benefits provided under the horse industry account.

(2) The commission, executive secretary or board of stewards must deny the application for license or suspend or revoke an existing license if the applicant or licensee:

(a) Is certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order;

(b) Has any outstanding arrest warrants; or

(c) Is currently suspended or revoked in Washington or by another recognized racing jurisdiction.

(3) A license suspension or revocation will be reported in writing to the applicant or licensee and electronically to the Association of Racing Commissioners International, Inc.

AMENDATORY SECTION (Amending WSR 12-05-042, filed 2/10/12, effective 3/12/12)

WAC 260-36-250 Industrial insurance. (1) At the time of submitting a license application, or as provided in this section, all ((~~trainers must pay the industrial insurance premium assessment required by RCW 67.16.300 and 51.16.210 for each person in their employment. The industrial insurance premiums will be based on the type of race meet the trainer is licensed to participate at and the type of license the employee is licensed as. All the trainer's employees must be properly licensed by the commission before being allowed to work. If a trainer releases an employee from employment, the trainer must notify the stewards within forty-eight hours.~~

~~(2) Class A, B, and C race meet.~~

~~(a) Trainers who are licensed at a Class A or B race meet must pay the industrial insurance premiums established by the department of labor and industries for parimutuel horse racing at major tracks.~~

~~(b) Trainers who are licensed at a Class C race meet will pay the industrial insurance premiums established by the department of labor and industries for parimutuel horse racing for nonprofit tracks.~~

~~(c) The trainer's base premium, covers all licensed pony riders employed by the trainer, and excludes assistant trainers, grooms and exercise riders.~~

(d) If a trainer who is licensed at a Class A or B race meet wishes to run a horse(s) at a Class C race meet during the same calendar year, the trainer from the Class A or B race meet is not required to pay any additional industrial insurance premiums to participate at a Class C race meet unless the trainer adds a groom slot or an assistant trainer, or starts different horses or adds more horses in training than they had at the Class A or B race meet. Should a trainer increase the number of employees or different horses started or in training, the trainer must pay the additional industrial insurance premiums for the Class C race meet.

(e) If a trainer who is licensed at a Class C race meet wishes to run a horse(s) at a Class A or B race meet during the same calendar year, the trainer from the Class C race meet must first pay the difference in industrial insurance premiums between what he/she has paid at the Class C race meet and the industrial insurance premiums due at the Class A or B race meet.

A trainer with a Class C license is ineligible to obtain Class A or B short duration coverage.

(3) Grooms and assistant trainers.

(a) At the time of licensing, or as provided in this section, a trainer must pay the annual industrial insurance premiums for grooms and assistant trainers established by labor and industries, unless exempted under reciprocal agreement outlined in subsection (7) of this section. Coverage will only apply to licensed grooms and assistant trainers working for the trainer, and excludes pony riders, and exercise riders employed by the trainer. In addition, a spouse groom is exempt from coverage requirements. A trainer is responsible for accurately reporting all grooms and assistant trainers in the trainer's employ. If a trainer releases any employee from employment, the trainer must notify the stewards within forty-eight hours. It is the trainer's responsibility to ensure all grooms and assistant trainers in their employ are properly licensed by the commission. (See also WAC 260-36-060 (1)(a).)

(b) A trainer must purchase a separate groom premium for the maximum number of grooms and/or assistant trainers hired at any one time. Prior to hiring a groom or assistant trainer, the trainer must ensure that a vacant groom/assistant trainer slot is available prior to allowing the groom or assistant trainer to work.

(4) Horse premiums - Exercise riders.

(a) At the time of licensing, or as provided in this section, a trainer must pay the annual industrial insurance premiums for all horses in training which covers exercise riders established by labor and industries unless exempted under reciprocal agreement outlined in subsection (7) of this section. Coverage will only apply to licensed exercise riders exercising horses for a licensed trainer and for trainers, also licensed as exercise riders, exercising any of the horses in their care and excludes grooms, assistant trainers and pony riders. All trainers at a Class A or B track are required to pay an industrial insurance premium for at least one horse. It is the trainer's responsibility to ensure all exercise riders in their employ are properly licensed by the commission.

(b) A trainer at a Class A or B track must pay all required annual industrial insurance premiums equal to the maximum number of horses in training on any given day, which covers exercise riders, during the calendar year that the trainer has both on and off the grounds of a racing association. A trainer is responsible for accurately reporting all horses as they enter and leave the grounds of a racing association and all horses in training off the grounds.

(c) For horses on the grounds of a Class A or B track, a trainer must count each horse under the trainer's care. Premiums will be calculated on the maximum number of horses in the trainer's care on any one day, even if the horse is stalled on the grounds for a day or less. (For example, if a trainer comes to Washington to enter or nominate his/her horse in one race and the horse is only on the grounds for one day, the trainer is required to pay the full industrial insurance premium for that one horse, except for short duration coverage as provided in subsection (4) of this section.) Pony horses will not be counted.

(i) For horses off the grounds, a trainer must count all horses in training that are subject to being ridden by licensed exercise riders, if the exercise riders are to be covered by the Washington labor and industries insurance under the horse industry account.

(ii) If any trainer increases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is responsible to pay the additional premiums as provided in this section.

(iii) If any trainer decreases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is not entitled to any refund as premiums are annual fees that are not prorated and are assessed on the maximum number of horses in training on any day during the calendar year.

(iv) It is the trainer's responsibility to maintain records and accurately report the number of horses in training (both on and off the grounds) for purposes of paying industrial insurance premiums required by this section. If at any time during the calendar year a trainer increases the number of horses in training or racing beyond the premium previously assessed, the trainer is responsible for immediately reporting and paying the additional premium owed.

(d) A trainer at a Class C track must pay industrial insurance premiums which covers exercise riders equal to the maximum number of different horses the trainer starts at the Class C tracks during the calendar year, or the maximum number of horses the trainer has in training, whichever is greater. All trainers at a Class C track are required to pay industrial insurance for at least one horse.

(i) If during the calendar year a horse is started by more than one trainer, that horse, for the purpose of calculating the annual industrial insurance premium a trainer is required to pay, will count as a different horse for each trainer.

(ii) It is the trainer's responsibility to maintain records and accurately report the number of different horses started or in training for the purpose of paying industrial insurance premiums required in this section. If at any time during the calendar year a trainer increases the number of different horses started or the total number of horses in training beyond the premium previously assessed, the trainer is responsible for immediately reporting and paying the additional premium owed.

~~(5) Short duration coverage.~~

~~(a) Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the amount of industrial insurance premium a trainer has to pay to provide employees financial relief from injury. Short duration coverage may be purchased no sooner than seven days prior to the start of the live race meet where the trainer plans to run. The following conditions will apply for short duration coverage:~~

~~(i) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for thirty consecutive calendar days. Trainers who have purchased any annual coverage at Class A or B race meets including paying installment premiums are not eligible for short duration coverage. Thirty-day short duration coverage can be purchased for each trainer's base coverage. Separate thirty-day short duration coverage can be purchased for each groom, and/or assistant trainer and separate coverage can be purchased for each horse on the grounds, which cover the exercise rider. The premium for thirty-day coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class A or B race meet short duration coverage for three thirty-day periods per calendar year. If a trainer extends coverage for more than three thirty-day periods, the trainer will owe the annual premium for each groom and assistant trainer, and the annual premium for exercise rides (based on all horses on the grounds during the previous ninety-day coverage period). The premium owed for coverage extending past ninety days will be the annual premium, less what the trainer may have already purchased for each risk class.~~

~~(ii) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. Seven-day short duration coverage can be purchased for each trainer's base premium. Separate seven-day short duration coverage can be purchased for each groom and assistant trainer. The premium for seven-day short duration coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.~~

~~(b) When applying for short duration coverage, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission. Prior to the end of each short duration coverage period a trainer must pay the short duration premium for any additional grooms, or assistant trainers (slots) and any additional horses brought on the grounds of a Class A or B race meet, or any additional horses started in a race at Class C race meets.~~

~~(c) Short duration coverage is only valid for the thirty-day period for Class A and B race meets or the seven-day period for Class C race meets and only covers workers while in the state of Washington.~~

~~(6) Installment program.~~

~~(a) As provided in subsections (1) through (4) of this section a trainer, at the time of licensing must pay the annual industrial insurance premiums for all employees, including assistant trainers and grooms, as well as premiums for horses in training to cover the exercise riders, and pony riders. However, a trainer may pay the annual industrial insurance premiums in installments as long as the horsemen's representative, through an agreement with the commission, agrees to assume financial responsibility and pay to the commission any delinquent industrial insurance premiums owed by trainers at the end of the racing season.~~

~~(b) A trainer who chooses to pay industrial insurance premiums in installments is obligated to make all installment payments of the annual industrial insurance premiums on the dates set annually by the executive secretary.~~

~~(i) The number of installment payments and percentages of each payment will be determined by the horsemen's representative and the executive secretary.~~

~~(ii) After the initial installment premium payment, if the trainer adds additional groom slots, assistant trainer slots, or owes additional horse premiums to cover exercise riders, the trainer must make a payment equal to all previous installments owed.~~

~~(c) Once a trainer makes an initial payment of industrial insurance, the trainer is responsible for the full annual premium. The total amount of premium owed will be considered undisputed under WAC 260-28-030, and failure to make any or all of the additional premium payments will be considered a violation. The board of stewards or executive secretary will have the authority to take action to collect the unpaid premium, including issuing a fine and suspending the trainer's license until the premium and fines are paid as provided in WAC 260-84-135.~~

~~(7) Reciprocal agreements. The state of Washington has reciprocal agreements with other states. Trainers shipping in from these jurisdictions who have industrial insurance from a reciprocal state need not obtain industrial insurance coverage so long as they comply with the conditions of RCW 51.12.120 and WAC 296-17-31009.~~)) licensed trainers must provide the commission with the name of all licensed employees, including grooms, assistant trainers, exercise riders - farm, and pony riders - farm. Trainers will be required to maintain accurate payroll records and may be required to submit them to the commission or the department of labor and industries for premium verification and/or claims processing. In addition the trainer will inform the commission of the worksite for each employee. For the purpose of industrial insurance coverage a worksite may only be one of the following locations:

(a) A Washington race track - A race track in the state of Washington granted race dates by the commission. A site will be designated as a Washington race track for the purposes of industrial insurance for only the period of the track's licensed race meet and periods of training when horses are exercised in preparation for competition. This period of time is limited to only that period of time when the stewards have authority on the grounds (WAC 260-24-510(2));

(b) Farm or training center - A farm or training center is any location off the grounds of a licensed race meet. This

will include any recognized race track located outside the state of Washington as well as any Washington race track during the period before its period of training or after its licensed race meet. For the purposes of industrial insurance all such locations will be considered a farm or training center.

(2) Grooms and assistant trainers.

(a) A licensed trainer must pay the industrial insurance premiums for all licensed grooms and licensed assistant trainers as established by labor and industries, unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed grooms and licensed assistant trainers working for the trainer, and excludes all exercise riders, pony riders, and any other licensed employee of the trainer, whether working at a farm or training center. In addition, licensed spouse grooms are exempt from coverage requirements.

(b) A trainer is responsible for accurately reporting to the commission all grooms and assistant trainers in the trainer's employ. If a trainer releases any employee from employment, the trainer must notify the commission within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all grooms and assistant trainers in their employ are properly licensed by the commission.

(c) The industrial insurance premiums will be assessed based on each groom or assistant trainer employed in the coverage month, or on a per day basis. The daily rate is ten percent of the monthly rate. Premiums will be paid to the commission on a monthly basis. A trainer must pay the assessed industrial insurance premium for each licensed groom and licensed assistant trainer at the end of each month, or before the trainer leaves the grounds taking his/her horses. Multiple trainers may employ the same groom, but each trainer is responsible for the entire applicable labor and industries premium. Payment of the full premium is normally due prior to the fifteenth of the following month. Failure to make the payment by the fifteenth will result in a fine and, if applicable, a suspension as outlined in WAC 260-84-135.

(3) Track employees.

(a) A trainer must pay the industrial insurance premiums for all track employees employed by the trainer to work on the grounds of a race track unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to track employees, which will include licensed exercise riders - track, and licensed pony riders - track, and excludes all grooms, spouse grooms, assistant trainers, and all farm employees working off the grounds of a Washington race track at a farm or training center.

(b) It is the trainer's responsibility to ensure all track employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover track employees will be assessed on the number of horses, per day, in a month a license trainer has horses on the grounds. The number of horses will include all horses on the grounds under the care of a licensed trainer, including pony horses. Premiums will be paid to the commission on a monthly basis. A trainer must pay the assessed industrial insurance premium for each horse per day at the end of each month, or before the trainer leaves the grounds taking his/her horses.

(i) A trainer is responsible to accurately report the correct number and identity of any horse or horses in their care.

(ii) A trainer is responsible to report any transfer of a horse in their care to another trainer at the commission office. Failure to report transfers will result in the trainer being assessed the industrial insurance premium for unreported transfers until the commission receives the required notice.

(4) Farm employees.

(a) A licensed trainer must pay the industrial insurance premiums for all licensed farm employees employed by the trainer to work at a farm or training center unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed farm employees which will include licensed exercise riders - farm, and licensed pony riders - farm, and excludes grooms, spouse grooms, assistant trainers, and all track employees working on the grounds of a Washington race track.

(b) A trainer is responsible for accurately reporting all farm employees in the trainer's employ. A trainer must notify the commission prior to any employee beginning work. If a trainer releases any farm employee from employment, the trainer must notify the stewards within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all farm employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover farm employees will be assessed on the number of employees, per day, multiplied by the number of days in the month the trainer reports the employee working. Trainers must report the anticipated work days and hours of work each day at the start of the month. If the work schedule changes the trainer must immediately notify the commission.

(d) A farm employee may be required to produce to the commission payroll records for verification of work days and/or claims processing.

(5) Reciprocal agreements. The state of Washington has reciprocal agreements with other states. Trainers shipping in from these jurisdictions who have industrial insurance from a reciprocal state need not obtain industrial insurance coverage so long as they comply with the conditions of RCW 51.12.120 and WAC 296-17-31009.

(6) Employees moving from one worksite to another.

(a) A licensed groom or licensed assistant trainer can move from the track to the farm or from the farm to the track. The trainer is not required to notify the commission whenever a licensed groom or licensed assistant trainer moves from the different worksites.

(b) A licensed exercise rider - track or licensed pony rider - track may not move from the track to the farm unless that person first obtains an exercise rider - farm or pony rider - farm license. On those days a track employee moves from the track to the farm, the trainer will be responsible, at the end of the month, to pay an additional farm premium for each employee, for each day they worked at the farm as provided in subsection (4) of this section.

(c) A licensed exercise rider - farm or licensed pony rider - farm can move from the farm to the track. Before moving any such employees, the employee must first also be licensed as an exercise rider - track or pony rider - track. On those days a farm exercise rider or pony rider moves to the track, the trainer will not be responsible to pay any additional premium, as long as the employee continues to have the farm premium assessed.

(d) A track employee is only covered under the per horse, per day premium, and then only while on the grounds of a Washington race track during its licensed race meet and periods of training. Any time prior to or after the stewards have authority on the grounds granted in WAC 260-24-510(2), the Washington track will be considered, for the purposes of industrial insurance coverage a farm or training center.

(7) Major track versus nonprofit race track.

(a) There will no longer be a distinction, for industrial insurance purposes, except as provided in (b) of this subsection, between a major (Class A or B) race track and a nonprofit (Class C) race track. Premiums to cover licensed employees will be assessed the same.

(b) License owners at a major race track will be assessed a premium of one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Owners, with partial ownership interest shall be assessed a prorated amount of the full ownership fee in increments of ten percent. Owners at a nonprofit or Class C race track will continue to pay a lesser premium as established annually by the department of labor and industries.

(c) Premiums paid by owners are a fee to subsidize workers compensation coverage for injured workers. The premiums paid by owners do not extend any coverage to owners.

(8) Coverage outside the state of Washington.

(a) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if that other jurisdiction has a reciprocal agreement with the state of Washington, and if:

(i) The trainer pays the premium for grooms and assistant trainers, and as long as both the trainer and grooms/assistant trainers are licensed by the commission; and

(ii) The trainer pays the premium at the farm rate for exercise riders - farm and pony riders - farm, and as long as both the trainer and all farm employees are licensed by the commission.

(b) Trainers must continue to report Washington employees to the commission prior to the start of each month so an assessment can be made. Failure to report may result in the trainer being referred to the stewards or executive secretary for further action.

(c) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

(9) Trainers will be provided an invoice monthly of premiums due. Total monthly premiums will be rounded to the next whole dollar.

NEW SECTION

WAC 260-36-260 Employees and duties. (1) Employees of licensed trainers are grooms, assistant trainers, exercise riders (both at the track and at the farm), and pony riders (both at the track and at the farm). Employees of a trainer may only perform those duties for which they are licensed and as outlined in this section. For the purposes of industrial insurance coverage under the horse industry account, coverage will only extend while an employee is properly licensed by the commission, employed by a licensed trainer, and only performing duties associated with the employee's license.

(2) Exercise riders, both at the track and farm may only perform the following duties:

(a) Exercise horses, which includes riding, lunge and line drive horses;

(b) Assist with saddling horses for training;

(c) Unsaddle horses following training;

(d) Clean tack following training;

(e) An exercise rider may not perform any of the duties of a groom, assistant trainer, pony rider, or other duties not usually preparing horses for competition.

(3) Pony riders may only perform the following duties:

(a) Escort horses to the track during training;

(b) Escort horses to the receiving barn and to the stable following a race;

(c) Escort horses to the starting gate in the post parade during racing (pony rider - track only);

(d) Clean stalls, rake and clean stable area associated with their ponies;

(e) A pony rider may not perform any duties of a groom, assistant trainer, exercise rider, or other duties not normally associated with escorting horses.

(4) Grooms may perform the following duties:

(a) Clean stalls, rake and clean stable area;

(b) Bathe, groom, feed, and water horses;

(c) Lead horses to and from hot walkers or to the track and/or receiving barn and paddock;

(d) Apply bandages, salves, topical medications, etc.;

(e) Tack horses for training;

(f) Handle horses in the paddock and test barn; and

(g) A groom may not mount or ride a horse.

(5) Assistant trainers may perform the duties of a groom and additionally may represent the trainer in other matters such as entering and scratching horses. An assistant trainer also may not mount or ride a horse.

AMENDATORY SECTION (Amending WSR 12-05-042, filed 2/10/12, effective 3/12/12)

WAC 260-84-135 Penalties relating to industrial insurance. For ((~~licensees~~)) trainers, whether at a race track or farm or training center, who fail to report correct industrial insurance requirements (number of persons in their employ and the number of horses in their care), the following penalties will be assessed:

(1) Failure to report correct number of horses ((~~in training~~)) on the grounds will result in a fine of ((~~fifty percent of the premium owed~~)) one hundred dollars for each horse and full payment of premium.

(2) Failure to report proper identification of horses entering or leaving the stable area will result in a fine of fifty dollars.

(3) Failure to report the correct number of employees (grooms ((~~and~~)), assistant trainers, exercise riders - farm, and pony riders - farm) will result in a fine of ((~~fifty percent of the premium owed~~)) one hundred dollars per month, per employee and full payment of premium.

(4) Failure to pay industrial insurance premium payment required under WAC 260-36-250 will result in a fine of one hundred dollars if payment is not received on or prior to the dates required. If the payment is not received within two days of the due date, the trainer's license will be suspended until the premium and fine are received by the commission. If a trainer leaves the grounds of a race track, taking his/her horses and fails to pay all premiums due, the trainer may be summarily suspended until the premium and the fine are received by the commission.

(5) Trainers who fail to comply with the industrial insurance requirements of WAC 260-36-250 may also have conditions placed on their license, including the inability to license farm employees, or being limited to conducting their business only on the grounds of a Washington race track during its licensed race meet and periods of training.

WSR 12-23-016
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-267—Filed November 9, 2012, 2:32 p.m., effective December 10, 2012]

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

Purpose: The purpose of this proposal is to streamline, reorganize, and update rules in accordance with the WAC overhaul project currently underway. The agency's RCWs were combined and updated after the department of fisheries and the department of wildlife were consolidated; however, consolidation, clean-up, and streamlining the WACs was never done. These changes are part of a larger effort to reorganize and update the agency's WACs.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing on October 5, 2012. The proposed changes were adopted by the commission at the November 8, 2012, commission meeting. The changes update, clarify, and improve enforceability of Puget Sound bottomfish rules, recreational shellfish rules, and commercial shellfish rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-16-330 General definitions—Dressed fish, 220-48-005 Puget Sound bottomfish—General provisions, 220-48-015 Beam trawl and otter trawl—Seasons, 220-48-052 Bottomfish troll—Seasons, 220-48-061 Drag seines—Gear, 220-48-071 Bottomfish pots—Gear and seasons, 220-52-018 Clams—Gear, 220-52-019 Geoduck clams—Gear and unlawful acts, 220-52-01901 Geoduck licenses, 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts, 220-52-043 Commercial crab fishery—Additional gear and license use requirements, 220-52-046 Crab fishery—Seasons and areas, 220-52-060 Crawfish fishery, 220-56-315 Crabs, shrimp, crawfish—Unlawful acts, 220-56-320 Shellfish gear—Unlawful acts, 220-56-330 Crab—Areas and seasons, 220-56-335 Crab—Unlawful acts and 220-56-365 Razor clams—Unlawful acts; new sections WAC 220-48-072 Unlawful retention of live bottomfish, 220-52-005 Crab—General unlawful acts, 220-52-01902 Commercial geoduck harvest—Requirements and unlawful acts, 220-52-01903 Commercial geoduck harvest—Time and area restrictions, 220-52-036 Definition—Commercial crab fishing, 220-52-038 Commercial crab licenses, 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements, 220-52-044 Commercial crab fishery—Coastal gear recovery permits, 220-52-045 Commercial crab fishery—Seasons and areas—Coastal, 220-52-047 Commercial crab gear—Possession of another's gear and tag tampering, 220-52-048 Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch reporting Areas, 220-52-049 Commercial crab fishery—Gear limits—Coastal, 220-56-317 Personal use shrimp pot gear requirements and 220-56-318 Personal use crab pot gear requirements; and repealing WAC 220-16-325 General definitions—Dressed fish length measurement, 220-48-001 Puget Sound bottomfish gear, 220-48-019 Roller trawl—Seasons, 220-48-025 Set net—Pacific cod—Gear, 220-48-026 Set net—Pacific cod—Seasons, 220-48-027 Set net—Pacific cod—Logbooks, 220-48-029 Set net—Dogfish—Seasons, 220-48-032 Set line—Seasons, 220-48-041 Commercial jig—Gear, 220-48-042 Commercial jig—Seasons, 220-48-051 Bottomfish troll—Seasons, and 220-48-062 Drag seines—Seasons.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 12-17-146 on August 22, 2012.

Changes Other than Editing from Proposed to Adopted Version: Some small editing changes were made from the proposed to the adopted version. However, these were all technical changes and nothing substantive. Changes include changes to titles for uniformity, some error correction, and some minor wording changes/additions for clarity.

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 14, Amended 18, Repealed 12.

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: November 8, 2012.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 817, filed 5/29/69)

WAC 220-16-330 General definitions—Dressed fish. (1) A dressed fish is defined as one from which the viscera or the viscera and head ((~~has~~)) have been removed, unless otherwise defined by department rule.

(2) The length of any dressed fish is defined as the shortest distance between the posterior end of the gill opening and the fork of the tail.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-16-325	General definitions—Dressed fish length measurement.

AMENDATORY SECTION (Amending Order 11-43, filed 3/23/11, effective 4/23/11)

WAC 220-48-005 Puget Sound bottomfish—General provisions. (1) It is unlawful to possess ((~~any~~)) English sole less than 12 inches in length taken ((~~by any~~)) with commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(2) It is unlawful to possess any starry flounder less than 14 inches in length taken ((~~by any~~)) with commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(3) It is unlawful to possess lingcod taken with ((~~any~~)) commercial gear ((~~the entire year~~)) year-round in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 24A, 24B, 24C, 24D, 25B, 25C, 25D, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(4) It is unlawful to possess ((~~any~~)) lingcod less than 26 inches in length or greater than 36 inches in length taken ((~~by any~~)) with commercial gear in all state waters east of the Bonilla-Tatoosh line.

(5) It is unlawful to possess lingcod taken ((~~by any~~)) with commercial gear from June 16 through April 30 in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 25A, 25E, and 29.

(6) It is unlawful to possess any species of shellfish taken with lawful bottomfish gear except as provided in WAC 220-52-063 and 220-52-066.

(7) Incidental catch.

(a) It is ((~~lawful~~)) permissible to retain bottomfish taken incidental to any lawful salmon fishery, provided the bottomfish could be lawfully taken under state law and department rule.

(b) It is unlawful to retain salmon or sturgeon taken incidental to any lawful bottomfish fishery in Puget Sound.

(c) It is unlawful to retain any species of shellfish taken incidental to any bottomfish fishery in Puget Sound, except ((~~that it is lawful to retain~~)) octopus and squid.

(d) It is unlawful to retain any whiting taken incidental to any bottomfish fishery in Catch Areas 24B, 24C or 26A except when using pelagic trawl gear when these areas have been opened by the director for a directed whiting fishery.

(8) A vessel trip is ((~~defined as having occurred~~)) completed upon the initiation of transfer of catch from a fishing vessel.

(9) Pacific cod.

(a) It is unlawful to discard ((~~any~~)) Pacific cod taken by ((~~any~~)) commercial fishing gear.

(b) All Pacific cod taken by a commercial gear ((~~shall~~)) must be landed at a licensed commercial dealer.

(10) Sablefish.

(a) It is unlawful to take more than 300 pounds of sablefish per vessel trip or more than 600 pounds of sablefish per two-month cumulative limit from open Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(b) A two-month cumulative limit is the maximum amount of fish that may be taken and retained, possessed or landed per vessel per two-fixed calendar month period. The fixed two-month periods are January-February, March-April, May-June, July-August, September-October and November-December.

(11) Sixgill shark. It is unlawful to retain sixgill shark taken ((~~by~~)) with commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(12) Rockfish. It is unlawful to retain any species of rockfish taken ((~~by~~)) with commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(13) Violation of this section is a gross misdemeanor or class C felony, punishable under RCW 77.15.520 or 77.15.550, depending on the gear used or the time and area fished.

AMENDATORY SECTION (Amending Order 11-43, filed 3/23/11, effective 4/23/11)

WAC 220-48-015 ((~~Beam trawl and otter trawl—Seasons.~~)) Puget Sound bottomfish—Unlawful gear. (1) It is unlawful to fish for ((~~and~~)) or possess bottomfish taken with ((~~otter trawl and beam trawl~~)) the following gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas:

(a) Otter trawl;

(b) Beam trawl;

(c) Dogfish set net gear;

(d) Pacific cod set net gear;

(e) Set line gear;

(f) Commercial jig gear; and

(g) Troll line gear.

(2) Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-48-052 ((~~Bottomfish troll—Seasons.~~)) Commercial salmon fishing—Retaining Puget Sound bottomfish incidental catch. (((~~(1) It is unlawful to fish for or possess bottomfish taken for commercial purposes with bottomfish troll gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.~~

~~(2) It is unlawful to fish for or possess salmon while fishing for bottomfish with troll line gear under authority of a bottomfish troll license.~~

~~(3) In any waters of Puget Sound it is lawful~~)) It is permissible to retain bottomfish for commercial purposes ((~~bottomfish~~)) taken with commercial salmon gear incidental to a lawful salmon fishery in any waters of Puget Sound, except lingcod during closures provided in WAC 220-48-005.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

WAC 220-48-061 Puget Sound bottomfish—Drag seine((~~s—Gear~~)) requirements and seasons. (1) It is unlawful to operate drag seine or beach seine gear without possessing a valid food fish drag seine fishery license. A violation of this subsection is a gross misdemeanor or class C felony, depending on the circumstances of the violation, punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

(2) It is ((~~lawful~~)) unlawful to take, fish for, and possess bottomfish((~~, unless otherwise provided,~~)) with drag seine or beach seine gear ((~~as described below~~)), unless the gear meets the following requirements:

(a) Seines must ((~~not~~)) be ((~~longer than~~)) 350 feet or less in length((~~.~~)); and

(b) Net mesh must ((~~not~~)) be ((~~smaller than~~)) 1/2-inch stretch measure or larger.

(((~~(2) Licensing: A food fish drag seine fishery license is the license required to operate the gear provided for in this section.~~)) (3) Violation of subsection (2) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(4) It is unlawful to take, fish for, or possess bottomfish with drag seine gear for commercial purposes except in the following Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

(a) Areas 28A, 28B, 28C, and 28D - Open January 1 through April 30.

(b) All other areas - Open September 1 through April 30, except that Areas 27A, 27B, 27C, and 29 are closed year-round.

(5) Violation of subsection (4) of this section is either a gross misdemeanor or class C felony, depending on the circumstances of the violation, punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending Order 11-43, filed 3/23/11, effective 4/23/11)

WAC 220-48-071 Puget Sound—Bottomfish pots((~~—Gear and seasons~~)). (1) It is unlawful to take, fish for, and possess bottomfish for commercial purposes with bottomfish pot gear as described in WAC 220-16-145, except in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

Areas 23C and 29 open only by permit from the director.

(2) ((~~Licensing: A bottomfish pot fishery license is the license required to operate the gear provided for in this section~~)) Violation of subsection (1) of this section is a gross misdemeanor, punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

(3) It is unlawful to operate bottomfish pot gear without possessing a valid bottomfish pot license. Violation of this subsection is a gross misdemeanor or class C felony, depending on the circumstances of the violation, punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

NEW SECTION

WAC 220-48-072 Unlawful retention of live bottomfish. It is unlawful to take and preserve bottomfish alive for any commercial purpose, except as otherwise provided by state law or department rule. Violation of this section is a gross misdemeanor punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-48-001	Puget Sound bottomfish gear.
WAC 220-48-019	Roller trawl—Seasons.
WAC 220-48-025	Set net—Pacific cod—Gear.
WAC 220-48-026	Set net—Pacific cod—Seasons.
WAC 220-48-027	Set net—Pacific cod—Logbooks.
WAC 220-48-029	Set net—Dogfish—Seasons.
WAC 220-48-032	Set line—Seasons.
WAC 220-48-041	Commercial jig—Gear.
WAC 220-48-042	Commercial jig—Seasons.
WAC 220-48-051	Troll lines—Bottomfish—Gear.
WAC 220-48-062	Drag seines—Seasons.

NEW SECTION

WAC 220-52-005 Crab—General unlawful acts. (1) It is unlawful to take or possess soft-shelled crab for any purpose. Violation of this subsection is punishable under RCW

77.15.160 or 77.15.550, depending on whether the crab was taken for personal use or commercial purposes.

(2) It is unlawful for any person to take or possess any female Dungeness crab for any purpose. All female Dungeness crab caught must be released immediately. Violation of this subsection is punishable under RCW 77.15.380 or 77.15.550, depending on whether the crab was taken for personal use or commercial purposes.

(3) It is unlawful to use bleach or antifreeze bottles or any other container as a float for gear used in recreational or commercial crab harvesting. Violation of this subsection is punishable under RCW 77.15.382 or 77.15.520, depending on whether the crab was taken for personal use or commercial purposes.

NEW SECTION

WAC 220-52-036 Definition—Commercial crab fishing. "Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crab for commercial purposes, and includes the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.

NEW SECTION

WAC 220-52-038 Commercial crab licenses. (1) It is unlawful to take, fish for, land, or deliver crab for commercial purposes in Washington or coastal waters unless the person has the license required by statute or department rule, or if the person is a properly designated alternative operator to a valid license.

(a) For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130.

(b) For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130.

(c) To use ring nets instead of or in addition to pots, a licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license as provided in RCW 77.65.130.

(d) Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators are provided in and controlled by chapters 77.65 and 77.70 RCW.

(2) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

(3) Violation of this section is a gross misdemeanor or a class C felony under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending Order 09-183, filed 8/31/09, effective 10/1/09)

WAC 220-52-040 Commercial crab fishery—((~~Lawful and unlawful gear, methods, and other~~)) Unlawful acts. (1) **Crab size and sex restrictions.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) **Net fishing boats ((~~shall~~)) must not have crab on board.** It is unlawful for any person to possess any ((~~quantity of~~)) crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for commercial purposes or while ((~~there are~~)) commercial quantities of food fish or shellfish are on board. Violation of this ((~~section~~)) subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), ((~~violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2)~~)) depending on the quantity of crab taken or possessed.

(((~~(2)~~))) (5) **Area must be open to commercial crabbing.** ((~~Except when acting lawfully under the authority of a valid permit as provided in (a) and (c) of this subsection,~~)) It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crab((~~s~~)) for commercial purposes in any area or ((~~at any~~)) time ((~~when the location~~)) that is not open for commercial crabbing by ((~~permanent rule or emergency~~)) rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-52-045.

(6) Violation of ((~~this section~~)) subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550(((~~(1), violation of commercial fishing area or time~~)), or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation. ((~~However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).~~

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

within twenty-four hours prior to the close of the commercial crab season.

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

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

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

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

(a) Any female Dungeness crabs; or

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

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

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

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

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

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

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

(6) **Groundline gear is unlawful.** It is unlawful to attach or connect a crab pot or ring net to another crab pot or ring net by a common groundline or any other means that connects crab pots together. Violation of this section is punishable under RCW 77.15.520.

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

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

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

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

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

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

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

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

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

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

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

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

~~(9) **No person can tamper with pot tags.** It is unlawful for any person to remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots. However, persons operating under a valid coastal gear recovery permit or emergency gear recovery permit, issued by the department and who adheres to the permit's provisions may possess crab pots or buoys bearing the tags of another license holder. Violation of this section is punishable under RCW 77.15.180 (3)(b).~~

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

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

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

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

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

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

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

~~(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.~~

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

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

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

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

~~(15)~~)) (7) **When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher, wholesale dealer, or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

(i) Are properly licensed commercial crab fishing; and

(ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) **Coastal - Barging of crab pots by undesignated vessels.** It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license ((~~to be used~~)) to deploy crab pot gear except ((~~as prescribed below~~)) under the following conditions:

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

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

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear ((~~must be~~)) is on board the undesignated vessel ((~~when~~)) while the gear is being deployed.

(10) Violation of ((~~this section~~)) subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

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

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

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

NEW SECTION

WAC 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. (1) **Buoy tag and pot tag required.**

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

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-52-045 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. Violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery after a signed affidavit is received by the department from the owner of a coastal commercial crab fishery license.

(A) Coastal crab license holders with a 300-pot limit may replace up to 15 lost tags by January 15th, up to a total of 30 lost tags by February 15th, and up to a total of 45 lost tags after March 15th of each season.

(B) Coastal crab license holders with a 500-pot limit may replace up to 25 lost tags by January 15th, up to a total of 50 lost tags by February 15th, and up to a total of 75 lost tags after March 15th of each season.

(C) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) Violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-56-320.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending Order 06-200, filed 8/10/06, effective 9/10/06)

WAC 220-52-043 Commercial crab fishery—((~~Additional gear and license use~~)) Shellfish pot requirements. (1) **Commercial gear limited to pots and ring nets.** It ((~~shall be~~)) is unlawful to take or fish for crab((~~s~~)) for commercial purposes except with shellfish pots and ring nets.

(2) **Commercial gear escape rings and ports defined.** It ((~~shall be~~)) is unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless ((~~such~~)) the gear meets the following requirements:

(a) Pot gear must have ((~~not less than two~~)) 2 or more escape rings or ports ((~~not less than 4-1/4 inches inside diameter.~~));

(b) Escape rings or ports ((~~described above~~)) must be 4-1/4 inches inside diameter or larger; and

(c) Escape rings or ports must be located in the upper half of the trap.

(3) ((~~**Commercial crab gear buoy tag requirements.**~~

~~(a) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.~~

~~(b) In Puget Sound all crab buoys must have the buoy tag issued to the license owner by the department attached to the outermost end of the buoy line.~~

~~(c) If more than one buoy is attached to a pot, only one buoy tag is required.~~

~~(4) **Puget Sound - Description of lawful buoys.** All buoys attached to commercial crab gear in Puget Sound waters must consist of a durable material and remain floating on the water's surface when five pounds of weight is attached. It is unlawful to use bleach or antifreeze bottles or any other container as a float. All buoys fished under a single license must be marked in a uniform manner using one buoy brand number registered by the license holder with the department and be of identical color or color combinations. No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of thirty percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white, as the red and white colors are reserved for personal use crab gear as described in WAC 220-56-320 (1)(c).~~

~~(5) **Commercial crab license requirements.** In addition to, and separate from, all requirements in this chapter that govern the time, area, gear, and method for crab fishing, landing, possession, or delivery of crabs, no commercial crab fishing is allowed except when properly licensed. A person may take, fish for, land, or deliver crabs for commercial purposes in Washington or coastal waters only when the person has the license required by statute, or when the person is a properly designated alternative operator to a valid license. For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130. For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130. To use ring nets instead of or in addition to pots, then the licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license in RCW 77.65.130. Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators is provided by and controlled by chapters 77.65 and 77.70 RCW.~~

~~(6)~~)) **Maximum size for commercial crab pots.** It is unlawful to ((~~commercially fish~~)) use a crab pot greater than ((~~thirteen~~)) 13 cubic feet in volume ((~~used~~)) to fish for or take Dungeness crab from state or offshore waters for commercial purposes.

(((~~7) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any crab fishing.~~)) (4) **Groundline gear is unlawful.** It is unlawful to attach or connect a crab pot or ring net to another crab pot or ring net by a common groundline or any other means that connects crab pots together.

(5) **Penalty.** Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty, or RCW 77.15.-522 Unlawful use of shellfish gear for commercial purposes—Penalty, whichever is applicable depending on the circumstances of the violation.

NEW SECTION

WAC 220-52-044 Commercial crab fishery—Coastal gear recovery permits. (1) **Emergency coastal crab gear recovery permit.** Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) **Coastal crab gear recovery permit.** 15 days after the close of the primary coastal commercial crab season, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 220-52-045 Commercial crab fishery—Seasons and areas—Coastal. The open times and areas for coastal commercial crab fishing are as follows:

(1) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is permissible to set baited crab gear beginning at 8:00 a.m. November 28.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions. If the department delays a season due to softshell crab conditions, the following provisions will apply:

(a) After consultation with the Oregon department of fish and wildlife and the California department of fish and wildlife, the director may establish a softshell crab demarcation line by emergency rule.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to softshell crab for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(c) It is unlawful for fishers to set crab gear in any area where the season opening is delayed, except that gear may be set as allowed by emergency rule. Emergency rules will allow setting 64 hours in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

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

WAC 220-52-046 Commercial crab fishery—Seasons and areas—Puget Sound. ((~~"Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crabs for commercial purposes, and shall include the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.~~))

The ((~~lawful~~)) open times and areas for commercial crab fishing in Puget Sound are as follows:

(1) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab fishing beginning 8:00 a.m. October 1st through the following April 15th ((~~and, after 8:00 a.m. October 1st,~~)) from ((~~one-half hour~~)) 30 minutes before sunrise to ((~~one-half hour~~)) 30 minutes after sunset, except as provided ((~~by other subsections~~)) below.

(2) For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:

(a) Catch Area 26A-E ((~~shall~~)) includes those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located ((~~.8~~)) 0.8 nautical miles north of Picnic Point.

(b) Catch Area 26A-W ((~~shall~~)) includes those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and northerly of a line from Apple Cove Point to Point Edwards, and south and west of a line that extends from Possession Point to the shipwreck located ((~~.8~~)) 0.8 nautical miles north of Picnic Point.

(3) The following areas are closed to commercial crab fishing except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in United States v. Washington:

(a) Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(4) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point, are closed October 1 through October 31 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the ((~~eastern most~~)) eastern-most oil dock are closed October 1 through October 31, and March 1 through April 15, of each year.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point to Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock, are closed October 1 through October 15.

(5) The following areas are closed to commercial crab fishing until further notice:

(a) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island, thence to Chuckanut Rock, thence to the most southerly tip of Clark's Point.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B, which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

~~(((6) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28. However, the department may delay opening of the coastal crab fishery due to softshell crab conditions, in which case the following provisions will apply:~~

~~(a) After consultation with the Oregon Department of Fish and Wildlife, the director may, by emergency rule, establish a softshell crab demarcation line.~~

~~(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area for which the season opening has been delayed due to softshell crab for the first thirty days following the opening of such an area if the vessel was employed in the coastal crab fishery during the previous forty-five days.~~

~~(c) Fishers may not set crab gear in any area where the season opening has been delayed, except that gear may be set as allowed by emergency rule and shall allow setting sixty-four hours in advance of the delayed season opening time.~~

~~(d) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.~~))

NEW SECTION

WAC 220-52-047 Commercial crab gear—Possession of another's gear and tag tampering. (1) **Possession of gear bearing another's crab pot tag or crab buoy tag.** It is unlawful for any person to possess, use, control, or operate any crab pot bearing a tag identifying the pot as belonging to another person, or any buoy not bearing tags issued by the department to the person possessing them, except:

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

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

(2) Violation of subsection (1) of this section is punishable under RCW 77.15.520, 77.15.522, 77.15.750, or 77.70.500, depending on the circumstances of the violation.

(3) **Pot tag or buoy tag tampering.** It is unlawful for any person to remove, damage, or otherwise tamper with crab buoy or pot tags not issued to that person, except: A person may possess the buoy tags or pot tags of another when the person is operating under a valid coastal gear recovery permit or emergency gear recovery permit issued by the department, and adheres to the permit's provisions.

(4) Violation of subsection (3) of this section is a gross misdemeanor punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.

NEW SECTION

WAC 220-52-048 Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (1) **Puget Sound licensing district commercial shellfish gear limit.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit applies to each license. This subsection does not preclude a person who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(2) **Marine Fish-Shellfish Management and Catch Reporting Areas gear limits.** It is unlawful for any person to use, maintain, operate, or control crab pots or ring nets in excess of the limits prescribed in each of the following Marine Fish-Shellfish Management and Catch Reporting Areas.

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

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

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

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

(3) Violation of subsection (2) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

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

NEW SECTION

WAC 220-52-049 Commercial crab fishery—Gear limits—Coastal. (1) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. Violation of this subsection is punishable under RCW

77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.530 Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

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

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

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

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

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

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

AMENDATORY SECTION (Amending Order 06-08, filed 1/22/06, effective 2/22/06)

WAC 220-52-018 Commercial clam((s—)) fishery—Gear. It ((~~shall be~~)) is unlawful to take, dig for, or possess clams, geoducks, or mussels taken for commercial purposes from any of the tidelands in the state of Washington except with a pick, mattock, fork or shovel operated by hand, except:

(1) Permits for the use of mechanical clam digging devices to take clams other than geoducks may be obtained from the director of ((~~fisheries~~)) the department of fish and wildlife (DFW), subject to the following conditions:

(a) ((~~Any or all types of~~)) All mechanical devices used ((~~in the taking~~)) to take or ((~~harvesting of~~)) harvest shellfish must be approved by the director of ((~~fisheries~~)) DFW.

(b) A separate permit ((~~shall be~~)) is required for each ((~~and every~~)) device used to take or harvest shellfish, and the permit ((~~shall~~)) must be attached to the specific unit the permit applies to at all times.

(c) All ((~~types of~~)) clams ((~~to be~~)) taken for commercial use must be of legal size and in season during the proposed operations unless otherwise provided in specially authorized permits for the transplanting of seed to growing areas or for research purposes.

(d) The holder of a permit to take shellfish from tidelands by mechanical means ((~~shall~~)) must limit operations to privately owned or leased land.

(e) ((~~The~~)) Taking ((~~of~~)) clams ((~~from bottoms~~)) that lie in or on the substrate under navigable water below the level of mean lower low water by any mechanical device ((~~shall be~~)) is prohibited except as authorized by the director of ((~~fisheries~~)) DFW.

(i) Within the enclosed bays and channels of Puget Sound, Strait of Juan de Fuca, Grays Harbor and Willapa Harbor, the operators of all mechanical devices ((~~shall~~)) must confine their operations to ((~~bottoms leased~~)) substrate-leased from the Washington department of natural resources, subject to the approval of the director of ((~~fisheries~~)) DFW.

((~~The harvesting of~~)) (ii) It is unlawful to harvest shellfish ((~~from bottoms~~)) that lie in or on the substrate of the Pacific Ocean westward from the western shores of the state ((~~shall not be carried out~~)) in waters less than ((~~two~~)) 2 fathoms deep at mean lower low water. ((~~In said waters more than two fathoms deep~~)) The director of ((~~fisheries~~)) DFW may reserve all or ((~~certain areas thereof~~)) portions of the substrate in waters more than 2 fathoms deep and prevent the taking of shellfish in any quantity from ((~~such~~)) those reserves ((~~established on the ocean bottoms~~)).

(f) Noncompliance with any part of ((~~these regulations~~)) this section or with special requirements of individual permits ((~~will~~)) results in immediate cancellation ((~~of~~)) and/or subsequent nonrenewal of all permits held by the operator.

(g) Applications for permits to use mechanical clam digging devices must be made on the forms provided by ((~~the department of fisheries~~)) DFW, and permits must be in ((~~the possession of~~)) the ((~~operator~~)) operator's possession before digging commences.

(h) All permits to take or harvest shellfish by mechanical means ((~~shall~~)) expire on December 31 of the year of issue.

(i) All mechanical clam harvesting machines must have approved instrumentation that ((~~will~~)) provides deck readout of water pressure.

(j) All clam harvest machines operating on intertidal grounds where less than ((~~ten~~)) 10 percent of the substrate material is above 500 microns in size must be equipped with a propeller guard suitable for reducing the average propeller wash velocity at the end of the guard to approximately ((~~twenty-five~~)) 25 percent of the average propeller wash velocity at the propeller. The propeller guard must also be positioned to provide an upward deflection to propeller wash.

(k) Clam harvest machines operating in fine substrate material where less than ((~~ten~~)) 10 percent of the substrate material is above 500 microns in size, ((~~shall~~)) must have a maximum harvest head width of 3 feet (overall) and the maximum pump volume as specified by ((~~the department of fisheries~~)) DFW, commensurate with the basic hydraulic relationship of 828 gpm at 30 pounds per square inch, pressure to be measured at the pump discharge.

(l) Clam harvest machines operating in coarser substrate material where more than ((~~ten~~)) 10 percent of the substrate material is above 500 microns in size, ((~~shall~~)) must have a maximum harvest head width of 4 feet (overall) and a maximum pump volume as specified by ((~~the department of fisheries~~)) DFW, commensurate with a basic hydraulic relationship of 1,252 gpm at 45 pounds per square inch, pressure to be measured at the pump discharge.

(m) All clam harvest machine operators must submit accurate performance data showing revolutions per minute, gallons per minute, and output pressure for the water pump on their machine. In addition, they ((~~shall~~)) must furnish the number and sizes of the hydraulic jets on the machines. If needed, the operator ((~~shall~~)) will thereafter modify the machine (install a sealed pressure relief valve) as specified by ((~~the department of fisheries~~)) DFW to conform with values set forth in ((~~either WAC 220-52-018 (11) or (12) of~~)) this section. Thereafter, it ((~~shall be~~)) is illegal to make unauthorized changes to the clam harvester water pump or the hydraulic jets. Exact description of the pump volume, maximum pressure and number and size of the hydraulic jet for each harvester machine ((~~shall~~)) must be included in the ((~~department of fisheries'~~)) DFW's clam harvest permit.

(n) All clam harvest machines ((~~shall~~)) must be equipped with a 3/4-inch pipe thread tap and valve that will allow rapid coupling of a pressure gauge for periodic testing by enforcement ((~~personnel~~)) officers.

(o) Each mechanical clam harvester must have controls ((~~so~~)) arranged and situated near the operator ((~~which will~~)) to allow the operator to immediately cut off the flow of water to the jet manifold without affecting the capability of the vessel to maneuver.

(p) Licensing: A hardshell clam mechanical harvester fishery license is ((~~the license~~)) required to operate the mechanical harvester gear provided for in this section. For more information on or to apply for a hardshell clam mechanical harvester fishery license, visit department offices, call the WDFW license division at 360-902-2500, or visit the department web site at www.wdfw.wa.gov.

(2) Aquatic farmers may harvest geoducks that are private sector cultured aquatic product by means of water pumps and nozzles.

(3) Persons may harvest nonstate tideland wild geoducks under a nonstate lands commercial wild clam, mussel and oyster trial fishery permit by means of water pumps and nozzles.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

WAC 220-52-060 Commercial crawfish fishery. ((~~It is unlawful to fish for or possess crawfish taken for commercial purposes except as provided for in this section:~~

~~(1) General crawfish provisions:~~

~~(a) Crawfish may not be taken for commercial purposes with gear other than shellfish pots and no person may fish more than 400 pots.~~

~~(b) The open season for commercial crawfish fishing is~~))

(1) Licensing: A shellfish pot fishery license is required to operate the gear provided for in this section. An application for a shellfish pot fishery license is available at the offices of the department, by calling the WDFW license division at 360-902-2500, or on the department web site at www.wdfw.wa.gov.

(2) Commercial crawfish season: The first Monday in May through October 31, except:

In Washington waters of the Columbia River downstream from the mouth of the Walla Walla River, it is permissible to take crawfish ((~~may be taken~~)) from April 1 through October 31.

((~~(c) The minimum commercial~~)) (3) Commercial crawfish size and sex restrictions:

(a) Crawfish ((~~size is~~)) must be 3-1/4 inches or more in length from the tip of the rostrum (nose) to the tip of the tail ((~~and~~)).

(b) All undersize crawfish and female crawfish with eggs or young attached to the abdomen must be immediately returned unharmed to the waters from which taken. ((~~Fishermen~~)) Fishers must sort and return illegal crawfish to the waters from which taken immediately after the crawfish are

removed from the shellfish pot and prior to lifting additional pots from the water.

(((~~(d) Fishermen may not discard into any water of the state any crawfish bait.~~

~~(e) Crawfish fishing is not allowed within 1/4 mile of the shoreline of developed parks.~~

~~(f) The provisions of this section do not apply to the commercial culture of crawfish at a registered aquatic farm.~~

~~(2)~~)) (4) Commercial crawfish gear, fishing areas, and pot number restrictions:

(a) It is unlawful to take crawfish for commercial purposes with gear other than shellfish pots.

(b) The department determines the maximum number of pots permitted in any given body of water. Once the permitted maximum number of pots for any given body of water is reached, no further permits may be issued for that area. Permits are issued on a first-come, first-served basis consistent with all other regulations concerning issuance of commercial crawfish harvest permits.

(c) It is unlawful for a person to fish more than 400 pots at one time in the commercial crawfish fishery.

(d) It is unlawful to fish for crawfish for commercial purposes in the following waters:

Clallam

Anderson Lake
Crescent Lake

Clark

Battleground Lake

Cowlitz

Merrill Lake

Grant

Deep Lake
Potholes Res.
Coulee Lake
Soap Lakes
Sun Lakes

Grays Harbor

Sylvia Lake

Island

Cranberry Lake

Jefferson

Anderson Lake

King

Cedar Lake
Elbow Lake
Green Lake
Green River
Margaret Lake
Sammamish Lake
Sammamish River
Sammamish Slough
Walsh Lake

Kittitas

Easton Lake

Klickitat

Horsethief Lake
Roland Lake

Lewis

Mineral Lake

Okanogan

Alta Lake
Buffalo Lake
Campbell Lake
Conconully Lake
Conconully Res.
Crawfish Lake
Omak Lake
Osoyoos Lake
Pearrygin Lake

Pacific

Middle Nemah River
North Nemah River
Smith Creek

Pend Oreille

Browns Lake (on Brown Cr)
Calispell Lake
Cooks Lake
Conklin Lake
Davis Lake
Half Moon Lake
Mystic Lake
No Name Lake
Shearer Lake
Vanee Lake

Pierce

Clear Lake
Spanaway Lake
Steilacoom Lake
Wapato Lake

Skagit

Beaver Lake
Caskey Lake
Cranberry Lake
Everett Lake
Minkler Lake
Pass Lake
Sixteen Lake
Whistle Lake

Skamania

Goose Lake
Mosquito Lake
South Prairie Lake

Stump (Tunnel) Lake

Snohomish

Ballinger Lake
Chaplain Lake
Flowing Lake
Goodwin Lake
Ki Lake
Martha Lake
Pass Lake
Roesiger Lake
Serene Lake
Shoecraft Lake
Silver Lake
Stevens Lake
Stickney Lake
Storm Lake

Thurston

Deep Lake
Hicks Lake
Long Lake
Patterson Lake
Summit Lake
Ward Lake

Whatcom

Budd Lake
Bug Lake
Caine Lake
Fishtrap Creek
Johnson Creek
Padden Lake
Toad or Emerald Lake

((~~(3)~~)) (e) It is unlawful to fish for crawfish within 1/4 mile of the shoreline of developed parks.

(f) It is ((~~lawful~~)) permissible for an individual fisherman to fish for crawfish for commercial use in the waters set out below with up to the number of pots shown.

Name of Lake, River, or Slough	County	Max. Pots Allowed
Alder Lake (Res.)	Pierce/Thurston	200
Aldwell Lake (Res.)	Clallam	100
Alkali Lake	Grant	100
Bachelor Slough	Clark	100
Baker Lake	Whatcom	200
Banks Lake	Grant	200
Big Lake	Skagit	200
Black Lake	Thurston	200
Blue Lake	Grant	200
Bonaparte Lake	Okanogan	100
Buckmire Slough	Clark	100
Camas Slough	Clark	100
Campbell Lake	Skagit	100
Cassidy Lake	Snohomish	100
Cavanaugh Lake	Skagit	200
Chehalis River	Lewis/Grays Harbor	100
Chelan Lake	Chelan	200
Clear Lake	Skagit	100
Coal Creek Slough	Cowlitz	100
Columbia River	Clark, Cowlitz, etc.	200
Copalis River	Grays Harbor, etc.	100
Cowlitz River	Clark, Cowlitz, etc.	100
Curlew Lake	Ferry	200
Cushman Lake #1	Clark	100
Deep River	Wahkiakum	100
Deschutes River	Thurston	100
Diablo Lake	Whatcom	200
Drano Lake	Skamania	100
Elochoman River	Wahkiakum	100
Erie Lake	Skagit	100
Evergreen Reservoir	Grant	100
Fisher Island Slough	Cowlitz	100
Goose Lake (upper)	Grant	100
Grays River	Pacific	100
Harts Lake	Pierce	100
Hoquiam River	Grays Harbor	100
Humptulips River	Grays Harbor	100
John's River	Grays Harbor	100
Kapowsin Lake	Pierce	200
Kalama River	Cowlitz, etc.	100
Klickitat	Klickitat	100
Lackamas Lake (Res.)	Clark	100
Lake River	Clark	100
Lawrence Lake	Thurston	100
Lenore Lake	Grant	200
Lewis River	Clark/Cowlitz	100
Loomis Lake	Pacific	100
Mayfield Lake	Lewis	200
McIntosh Lake	Thurston	100
McMurray Lake	Skagit	100
Merwin Lake	Clark/Cowlitz	200
Moses Lake	Grant	200
Naselle River	Pacific, etc.	100
Nisqually River	Pierce, etc.	100
Nooksack River	Whatcom	100
North River	Grays Harbor	100
Palmer Lake	Okanogan	100
Patterson Lake (Res.)	Okanogan	100
Portage Bay	King	100
Rattlesnake Lake	King	100
Ross Lake (Res.)	Whatcom	200
Salmon Lake	Okanogan	100
Satsop River	Grays Harbor	100
Shannon Lake (Res.)	Skagit	200
Sidley Lake	Okanogan	100
Silver Lake	Pierce	100
Silver Lake	Cowlitz	200
Skagit River	Skagit/Whatcom	200
Skamokawa River	Wahkiakum	100
Snake River	Franklin/Walla Walla	200
Snohomish River	Snohomish	100
St. Clair Lake	Thurston	100

Name of Lake, River, or Slough	County	Max. Pots Allowed
Swift Lake (Res.)	Skamania	200
Terrell Lake	Whatcom	100
Toutle River	Cowlitz	100
Union Lake	King	200
Vancouver Lake	Clark	200
Warden Lake	Grant	100
Washington Lake	King	200
Washougal River	Clark/Skamania	100
Whitestone Lake	Okanogan	100
Willapa River	Pacific	100
Wiser Lake	Whatcom	100
Wind River	Cowlitz	100
Wishkah River	Grays Harbor	100
Woodland Slough	Clark	100
Wynoochee River	Grays Harbor	100
Yakima River	Kittitas	100
Yale Lake (Res.)	Clark/Cowlitz	200

(((~~(4)~~))) (g) Commercial crawfish harvest permits will be issued to ((~~prescribe~~)) limit the number of ((~~allowable~~)) crawfish pots permissible per fisherman per body of water in suitable crawfish harvest sites not listed in subsections (((~~(2)~~))) (4)(d) and (((~~(3)~~))) (e) of this section as follows:

(((~~(a)~~))) (i) Under 20 acres - No commercial harvest.

(((~~(b)~~))) (ii) 20 acres to 100 acres - 50 pots.

(((~~(c)~~))) (iii) 101 acres to 400 acres - 100 pots.

(((~~(d)~~))) (iv) Over 400 acres - 200 pots.

(((~~(e)~~))) (h) Permits ((~~will~~)) may be issued only in waters where fishing will not conflict with high density residential or recreational areas((~~, and~~)). No permit will be issued where developed parks encompass more than ((~~one-half~~)) 1/2 of the water shoreline.

(((~~(f) The department of fisheries shall fix the maximum number of pots to be permitted in any given body of water. Once the permitted maximum number of pots for any given body of water has been reached, no further permits will be issued. Permits will be issued on a first-come, first-serve basis consistent with all other regulations concerning issuance of commercial crawfish harvest permits.~~

~~(5) Licensing: A shellfish pot fishery license is the license required to operate the gear provided for in this section.~~)) (5) It is unlawful to discard any crawfish bait into the waters of the state.

(6) This section does not apply to the commercial culture of crawfish at a registered aquatic farm.

(7) It is unlawful to fish for or possess crawfish taken for commercial purposes in violation of this section. Violation of this section is punishable under RCW 77.15.500, 77.15.520, 77.15.522, or 77.15.540, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending Order 06-197, filed 8/10/06, effective 9/10/06)

WAC 220-52-019 Commercial geoduck ((~~clams~~)) harvest—Gear ((~~and unlawful acts~~)) restrictions. (1) It is unlawful to ((~~take, fish for or possess geoduck clams taken for commercial purposes from any of the beds of navigable waters of the state of Washington except as provided in RCW 75.24.100 and rules of the director.~~

~~(2)(a) Only~~)) use any gear other than a manually operated water jet((~~, the~~)) with a nozzle ((~~of which shall not exceed~~)) 5/8 of an inch or less inside diameter ((~~may be used~~)) to commercially harvest geoducks ((~~clams. Use of any other gear requires~~)), unless a permit to use other gear is first obtained from the director.

(((~~(b)~~))) (2) It is unlawful ((~~in the commercial harvest of geoducks~~)) for through-hull fittings for water discharge hoses connected to ((~~the~~)) harvest gear to be below the water's surface ((~~of the water~~)) in the commercial harvest of geoducks. ((~~Any~~)) Through-hull fittings connected to ((~~the~~)) harvest gear ((~~which is~~)) above the water's surface ((~~of the water~~)) must be visible at all times.

(((~~(3) It is unlawful to take or fish for geoduck clams taken for commercial purposes between one-half hour before official sunset or 7:00 p.m. whichever is earlier and 7:00 a.m. No geoduck harvest vessel may be on a geoduck tract or harvest area after 7:30 p.m. or before 6:30 a.m. It is unlawful to take or fish for geoduck clams on Sundays or on state holidays as defined by the office of financial management. It is unlawful to possess geoduck clams taken in violation of this section.~~

~~(4) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.~~

~~(5) It is unlawful to possess only the siphon or neck portion of a geoduck clam aboard a geoduck harvest vessel, except when a geoduck is incidentally damaged during harvest and must be reported under a department of natural resources harvest agreement.~~

~~(6) It is unlawful to retain any food fish or shellfish other than geoduck clams during geoduck harvesting operations, except for horse clams (*Tresus capax and Tresus nuttallii*) when horse clam harvest is provided for under a department of natural resources harvest agreement.~~

~~(7) It is unlawful for more than two divers from any one geoduck harvest vessel to be in the water at any one time.~~

~~(8) The following documents must be on board the geoduck harvesting vessel at all times during geoduck operations:~~

~~(a) A copy of the department of natural resources geoduck harvesting agreement for the tract or area where harvesting is occurring;~~

~~(b) A map of the geoduck tract or harvest area and complete tract or harvest area boundary identification documents or photographs issued by the department of natural resources for the tract or harvest area;~~

~~(c) A geoduck diver license for each diver on board the harvest vessel or in the water; and~~

~~(d) A geoduck fishery license as described in WAC 220-52-01901.~~

~~(9) It is unlawful to process geoducks on board any harvest vessel.~~

~~(10) It is unlawful to take or fish for geoduck clams for commercial purposes outside the tract or harvest area designated in the department of natural resources geoduck harvesting agreement required by subsection (8)(a) of this section. It~~

~~is unlawful to possess geoduck clams taken in violation of this subsection.~~

~~(11) It is unlawful to harvest geoduck clams in areas deeper than seventy feet below mean lower low water (0.0 ft.).~~

~~(12) Holders of geoduck fishery licenses shall comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. Some of those regulations appear at 29 C.F.R. Part 1910, Subpart T.~~))

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

WAC 220-52-01901 Commercial geoduck harvest license((~~s~~)). (1) ((~~A~~)) It is unlawful to commercially harvest geoducks unless the harvester possesses a valid, director-issued geoduck fishery license ((~~issued by the director is required for the commercial harvest of geoduck clams. Geoduck fishery licenses were previously called "geoduck validations~~)).((~~"~~))

A geoduck fishery license card is a "license card" under WAC 220-69-270.

(2) Only persons holding current geoduck harvest agreements from the department of natural resources or their agents may apply for geoduck fishery licenses. An application for a geoduck fishery license must be fully completed on a form provided by the department((~~, must be complete,~~)) and ((~~must be~~)) accompanied by a copy of the geoduck harvest agreement for which the license is sought.

(3) Each geoduck fishery license authorizes the use of two water jets or other units of geoduck harvest gear. Commercial geoduck harvesting gear must meet the requirements of WAC 220-52-019(((~~(2). A geoduck fishery license card is a "license card" under WAC 220-69-270~~)).

(4) Holders of geoduck fishery licenses must comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq. Some of these regulations appear at 29 C.F.R. Part 1910, Subpart T.

(a) The director may suspend or revoke a geoduck license used in violation of commercial diving safety regulations, including 29 C.F.R. Part 1910, Subpart T, adopted under the Occupational Safety and Health Act of 1970. The procedures of chapter 34.05 RCW apply to ((~~such~~)) these suspensions or revocations.

(b) If there is a substantial probability that a violation of commercial diving safety regulations could result in death or serious physical harm to a person ((~~engaged in~~)) harvesting geoducks ((~~clams~~)), the director may immediately suspend the license ((~~immediately~~)) until the violation ((~~has been~~)) is corrected. If the violator fails to correct the violation within ten days of notice of the violation, the director may revoke the violator's geoduck license. The director ((~~shall~~)) may not revoke a geoduck license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.

NEW SECTION

WAC 220-52-01902 Commercial geoduck harvest—Requirements and unlawful acts. (1) It is unlawful to take, fish for, or possess geoduck clams taken for commercial purposes from the substrate of any Washington state waters except as provided by RCW 77.60.070 and department rule.

(2) It is unlawful to engage in geoduck harvesting operations unless the following documents are onboard the geoduck harvesting vessel:

(a) A copy of the department of natural resources (DNR) geoduck harvesting agreement for the tract or area where harvesting is occurring;

(b) A map of the geoduck tract or harvest area and complete tract or harvest area boundary identification documents or photographs issued by DNR for the tract or harvest area;

(c) A geoduck diver license for each diver on board the harvest vessel or in the water; and

(d) A geoduck fishery license as described in WAC 220-52-01901.

(3) It is unlawful for more than two divers from any one harvest vessel to be in the water at any one time.

(4) It is unlawful to process geoduck clams on board any harvest vessel.

(5) It is unlawful to possess only the siphon or neck portion of a geoduck aboard a geoduck harvest vessel, except when the geoduck is incidentally damaged during harvest. Geoduck damage sustained incidental to harvest must be reported under a DNR harvest agreement.

(6) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

(7) It is unlawful to retain any food fish or shellfish other than geoduck clams during geoduck harvesting operations, except for horse clams (*Tresus capax* and *Tresus nuttallii*) when horse clam harvest is provided for under a DNR harvest agreement.

(8) Violation of this section is punishable by RCW 77.15.520, 77.15.540, or 77.15.550, depending on the circumstances of the violation.

NEW SECTION

WAC 220-52-01903 Commercial geoduck harvest—Time and area restrictions. (1) It is unlawful to harvest geoducks for commercial purposes during the following time and day restrictions:

(a) Between one-half hour before official sunset or 7:00 p.m., whichever is earlier, and 7:00 a.m.

(b) It is unlawful for a geoduck harvest vessel to be on a geoduck tract or harvest area after 7:30 p.m. or before 6:30 a.m.

(c) It is unlawful to take or fish for geoducks on Sundays or on state holidays as defined by the office of financial management.

(2) It is unlawful to take or fish for geoducks for commercial purposes outside the tract or harvest area designated in the department of natural resources harvest agreement required by WAC 220-52-01901 and 220-52-01902.

(3) It is unlawful to harvest geoducks in areas deeper than 70 feet below mean lower low water (0.0 ft.).

(4) It is unlawful to possess geoducks taken in violation of this section.

(5) Violation of this section is a misdemeanor or class C felony punishable by RCW 77.15.550, depending on the circumstances of the violation or the value of the shellfish taken.

AMENDATORY SECTION (Amending WSR 08-07-003, filed 3/5/08, effective 4/5/08)

WAC 220-56-315 Personal use crab((s)), shrimp, crawfish—Unlawful acts. (1) It is unlawful to take and possess crab((s)), shrimp, and crawfish taken for personal use except by hand or with hand dip nets, ring nets, shellfish pots, ((and)) or any hand-operated instrument that will not penetrate the shell. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 or 77.15.382 depending on the circumstances of the violation.

(2) It is unlawful to set, fish, or pull more than ((two)) 2 units of gear at any one time except:

(a) In Puget Sound waters it is unlawful to set, fish, or pull at any one time more than ((two)) 2 units of crab gear and ((two)) 2 additional units of shrimp gear.

(b) It is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled in Catch Record Card Areas 4 through 13 to have on board or to fish more than ((four)) 4 shrimp pots.

(c) ((In the Columbia River)) It is unlawful to set, fish, or pull more than ((three)) 3 units of crab gear in the Columbia River.

(d) ((In fresh water)) It is ((lawful)) permissible to use up to ((five)) 5 units of gear to fish for crawfish in fresh water.

(3) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

(4) It is unlawful to salvage or attempt to salvage shellfish pot gear from Hood Canal that has been lost without first obtaining a permit, issued by the director, authorizing ((such)) that activity ((issued by the director, and)). It is unlawful to fail to comply with all provisions of ((such)) the permit authorizing the salvage of gear from Hood Canal. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

(5)((~~It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.~~

~~(6)~~)) It is unlawful to dig for or possess ghost or mud shrimp taken for personal use by any method except hand operated suction devices or dug by hand. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

((~~(7) One unit of gear is equivalent to one ring net or one shellfish pot.~~)) (6) It is unlawful to have more than one unit of unattended gear attached to a buoy line or to fail to have a separate buoy for each unit of gear. One unit of gear means one ring net or one shellfish pot. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

((~~(8)~~)) (7) In waters open only on certain days or certain hours during the day, except for the night closure set out in subsection (9) of this section, it is unlawful to fail to remove gear from the water when fishing for shellfish is not allowed((~~, and~~)). It is also unlawful to fail to remove gear from the water by one hour after sunset if fishing is not allowed on the next calendar day. In waters that are open continuously, except for the night closure set out in subsection (9) of this section, gear may be left in the water during the night closure. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.

((~~(9)~~)) (8) It is unlawful to set or pull shellfish pots, ring nets or star traps from a vessel in Catch Record Card Areas 1-13 from one hour after official sunset to one hour before official sunrise. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.

((~~(10) It is unlawful to possess soft-shelled crab for any personal use purpose. Violation of this subsection shall be an infraction, punishable under RCW 77.15.160.~~))

NEW SECTION

WAC 220-56-317 Personal use shrimp pot gear requirements. (1) All buoys attached to shrimp gear must be yellow or fluorescent yellow in color. Flags and staff, if attached, may be any color.

(2) It is unlawful to take, fish for, or possess shrimp taken for personal use with shellfish pot gear unless the gear meets the following requirements:

(a) A shrimp pot may not exceed 10 feet in perimeter and 1-1/2 feet in height.

(b) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material, except the entrance tunnels must have the minimum mesh opening size specified in subsection (2)(c) of this section.

(c) The minimum mesh size for shrimp pots is one inch, defined as a mesh that a 7/8 inch square peg will pass through each mesh opening. Flexible (web) mesh pots must have an opening with a mesh size of a minimum of 1-3/4 inch stretch measure.

June 1 through October 15, Area 4 east of the Bonilla-Tatoosh line, and Areas 5 through 13:

(i) In any Marine Area or portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is 1/2-inch.

(ii) 1/2-inch mesh is defined as mesh that a 3/8-inch square peg will pass through each mesh opening, except for flexible (web) mesh pots where the opening must be a minimum of 1-1/8 inch stretch measure.

(d) All entrance tunnels must open into the pot from the side.

(e) The sum of the maximum widths of all entrance tunnels must not exceed half of the perimeter of the bottom of the pot.

NEW SECTION

WAC 220-56-318 Personal use crab pot gear requirements. (1) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color.

(2) It is unlawful to fish for crab using shellfish pot gear greater than 13 cubic feet in volume.

(3) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless:

(a) The gear is equipped with 2 or more escape rings located in the upper half of the pot; and

(b) Escape rings are 4-1/4 inches inside diameter or larger, except in the Columbia River where escape ring minimum size is 4 inches inside diameter.

(4) It is unlawful to use mesh size for crab pots smaller than 1.5 inches.

AMENDATORY SECTION (Amending WSR 08-07-003, filed 3/5/08, effective 4/5/08)

WAC 220-56-320 Personal use shellfish gear—Unlawful acts. (1) ((~~It is unlawful for the owner or operator of any personal use shellfish gear to leave such gear unattended in the waters of the state unless said gear is marked with a buoy to which shall be affixed in a permanent visible and legible manner the first and last name and permanent mailing address of the operator. It is unlawful for more than one person's name and address to appear on the same marker buoy.~~)) It is unlawful to violate the following provisions regarding unattended shellfish gear:

(a) Unattended shellfish gear must ((~~have~~)) be marked with a buoy that lists the first and last name and permanent mailing address of the owner.

(i) The information on the buoy must be permanent, visible, and legible.

(ii) Only one person's name and address may appear on a marker buoy.

(b) All buoys must consist of durable material. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy.

(c) Buoys must remain visible on the surface at all times, except during extreme tidal conditions.

(d) The line attaching ((~~the~~)) a buoy to ((~~the~~)) shellfish gear must be weighted sufficiently to prevent the line from floating on the water's surface.

(((~~(b) All buoys must consist of durable material and remain visible on the surface at all times except during extreme tidal conditions. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans or any other container.~~

~~(c) All buoys attached to shrimp gear must be yellow or fluorescent yellow in color. Flags and staff, if attached, may be any color.~~

~~(d) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color.~~

~~(2) It is unlawful for the maximum perimeter of any shrimp pot to exceed 10 feet, and the pot shall not exceed 1-1/2 feet in height.~~

~~(3) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless such gear is equipped with not less than two escape rings located in the upper half of the pot which are not less than 4-1/4 inches inside diameter in all waters except in the Columbia River the escape ring minimum size is 4 inches inside diameter. It is unlawful to use mesh size for crab pots less than 1-1/2 inches.~~

~~(4) It is unlawful to take, fish for or possess shrimp taken for personal use with shellfish pot gear unless such gear meets the following requirements:~~

~~(a) The entire top, bottom, and sides of the shellfish pots must be constructed of mesh material and except for the entrance tunnels have the minimum mesh opening size defined below.~~

~~(b) The minimum mesh size for shrimp pots is one inch, defined as a mesh that a 7/8-inch square peg will pass through each mesh opening except for flexible (web) mesh pots where the opening must be a minimum of one and three-quarters inch stretch measure except:~~

~~June 1 through October 15, Area 4 east of the Bonilla-Tatoosh line, and Areas 5 through 13: In any Marine Area of portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is one-half inch, defined as a mesh that a 3/8 inch square peg will pass through each mesh opening except for flexible (web) mesh pots where the opening must be a minimum of one and one-eighth inch stretch measure.~~

~~(c) All entrance tunnels must open into the pot from the side.~~

~~(d) The sum of the maximum widths of all entrance tunnels must not exceed 1/2 the perimeter of the bottom of the pot.~~

~~(5)~~)) (2) It is unlawful to fish for or possess shellfish taken for personal use with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(a) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated, 100 percent cotton twine no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.

(b) An opening in the pot mesh no less than three inches by five inches which is laced or sewn closed with untreated, 100 percent cotton twine no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

(c) Attachment of pot lid or one pot side serving as a pot lid with no more than ((~~three~~)) 3 single loops of untreated 100 percent cotton or other natural fiber twine no larger than thread size 120 so that the pot lid or side will open freely if the twine or fiber is broken.

(((~~(6)~~))) (3) It is unlawful to set shellfish pots in a manner that they are not covered by water at all times.

(((~~(7) It is unlawful to fish for crab using shellfish pot gear greater in volume than thirteen cubic feet.~~

(~~8~~))) (4) Use of gear in violation of this section is an infraction, punishable under RCW 77.15.160, except failure to use untreated cotton twine as provided for in subsection (((~~(5)~~))) (2) of this section ((~~remains~~)) is a misdemeanor punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.

(((~~(9)~~))) (5) It is unlawful to possess shellfish taken with gear in violation of the provisions of this section. Possession of shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the shellfish were taken with ((~~such~~)) that gear. Violation of this subsection is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

AMENDATORY SECTION (Amending Order 11-29, filed 4/11/11, effective 5/12/11)

WAC 220-56-330 Crab—Areas and seasons—Personal use. (1) It is unlawful to fish for or possess crab taken for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 8-1, 8-2, 9, 10, 11, 12, and 13: Open 7:00 a.m., July 1 through Labor Day, Thursday through Monday of each week.

(b) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence due west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m., July 15 through September 30, Thursday through Monday of each week.

(c) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m. August 15 through September 30, Thursday through Monday of each week.

(2) It is unlawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Areas 1, 2, 3, and Area 4 west of the Bonilla-Tatoosh line except during the period from December 1 through September 15. Open to gear other than shellfish pot gear year-round.

(3) The Columbia River upstream from a line projected from the outermost end of the north jetty to the exposed end of the south jetty is open to crab fishing for personal use year-round.

(4) It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.

(5) Violation of this section is a misdemeanor, punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty.

AMENDATORY SECTION (Amending Order 04-39, filed 3/4/04, effective 5/1/04)

WAC 220-56-335 Crab—Unlawful acts—Personal use. (1) It is unlawful for any person to take or possess ((~~for personal use~~)) any female Dungeness crab((~~s~~)) for personal use.

(2) It is unlawful to take or possess any male Dungeness crabs taken for personal use ((~~which measure~~)) measuring less than the following ((~~sizes~~)) caliper measurements:

(a) In Puget Sound (all contiguous waters east of the Bonilla-Tatoosh Line) - 6 1/4 inch minimum size.

(b) In coastal waters west of the Bonilla-Tatoosh Line, Pacific Ocean waters except when fishing from the north jetty of the Columbia River, Grays Harbor, Willapa Bay - 6 inch minimum size.

(c) In the Columbia River upstream of a line from the outermost end of the north jetty to the exposed end of the south jetty, and when fishing from the north jetty of the Columbia River - 5 3/4 inch minimum size.

(3) It is unlawful to take or possess any red rock crab((~~s~~)) taken for personal use that measure less than ((~~five~~)) 5 inches. Either sex may be retained.

(4) All crab measurements ((~~shall~~)) must be made at the widest part of the shell (caliper measurement) immediately in front of the points (tips).

(5) It is unlawful to possess in the field any crab or crab parts ((~~thereof~~)) without also retaining the back shell.

(6) It is unlawful to possess soft-shelled crab for any personal use purpose. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending Order 95-10, filed 1/30/95, effective 5/1/95)

WAC 220-56-365 Razor clams—Unlawful acts. (1) It is unlawful to return any razor clams to the beach or water regardless of size or condition, and all razor clams taken for personal use must be retained by the digger as a part of his or her daily limit.

(2) It is unlawful to drive or operate any motor-propelled vehicle, land any airplane, or ride or lead any horse on the razor clam beds of the state of Washington, as defined in WAC 220-16-257.

(3) A violation of this section is an infraction, punishable under RCW 77.15.160.

WSR 12-23-020
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 13, 2012, 10:34 a.m., effective December 14, 2012]

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

Purpose: SSB 5801 (chapter 6, Laws of 2011) directs the department of labor and industries (L&I) to establish a statewide health care provider network to treat injured and ill workers of employers insured with L&I and with self-insured employers. Rules are necessary to implement the changes required in SSB 5801.

(1) The first rule-making phase adopted minimum standards for credentials of health care providers in the statewide health care provider network and to clarify what constitutes patterns of risk of harm or death that determines when L&I may remove a provider from the network or take other appropriate action.

(2) The second rule-making phase amended existing rules to allow injured and ill workers to see a provider of their choice for the initial visit and to inform health care providers and workers when care must be transferred to a network provider.

(3) This third rule making is necessary to address existing department rules that may conflict with the network implementation. Changes to the following WACs were adopted for consistency or clarification: WAC 296-20-01010, 296-20-01020, and 296-20-02705.

Reasons Supporting Proposal: The third phase changes were adopted so that health care providers, state fund and self-insured employers, and injured and ill workers have a clear understanding of this new health care provider network and their rights and requirements under SSB 5801.

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-01010, 296-20-01020, and 296-20-02705.

Statutory Authority for Adoption: RCW 51.36.010, 51.04.020, and 51.04.030.

Adopted under notice filed as WSR 12-17-121 on August 21, 2012.

Changes Other than Editing from Proposed to Adopted Version:

- Clarifying change to WAC 296-20-01010.
- Removing proposed amendments to WAC 296-20-03015 (see details in the CES).

A final cost-benefit analysis is available by contacting Leah Hole-Curry, L&I, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-4996, fax (360) 902-6315, e-mail Leah.Hole-Curry@Lni.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: November 13, 2012.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 12-02-058, filed 1/3/12, effective 2/3/12)

WAC 296-20-01010 Scope of health care provider network. (1) The rules establish the development, enrollment, and oversight of a network of health care providers approved to treat injured workers. The health care provider network rules apply to care for workers covered by Washington state fund and self-insured employers.

(2) As of January 1, 2013, the following types of health care providers (hereafter providers) must be enrolled in the network with an approved provider agreement to provide and be reimbursed for care to injured workers in Washington state beyond the initial office or emergency room visit:

(a) Medical physicians and surgeons;
(b) Osteopathic physicians and surgeons;
(c) Chiropractic physicians;
(d) Naturopathic physicians;
(e) Podiatric physicians and surgeons;
(f) Dentists;
(g) Optometrists;
(h) Advanced registered nurse practitioners; and
(i) Physician assistants.

(3) The requirement in subsection (2) of this section does not apply to providers who practice exclusively in acute care hospitals or within inpatient settings in the following specialties:

(a) Pathologists;
(b) Consulting radiologists working within a hospital radiology department;
(c) Anesthesiologists or certified registered nurse anesthetists (CRNAs) except anesthesiologists and CRNAs with pain management practices in either hospital-based or ambulatory care settings;
(d) Emergency room providers; or
(e) Hospitalists.

(4) The department may phase implementation of the network to ensure access within all geographic areas. The director of the department shall determine, at his/her discretion, whether to establish or expand the network, after consideration of at least the following:

• The percent of injured workers statewide who have access to at least five primary care providers within fifteen miles, compared to a baseline established within the previous twelve months;

• The percent of injured workers by county who have access to at least five primary care providers within fifteen miles, compared to a baseline established within the previous twelve months; and

• The availability within the network of a broad variety of specialists necessary to treat injured workers.

The department may expand the health care provider network scope to include additional providers not listed in subsection (2) of this section, listed in subsection (3) of this section, and to out-of-state providers. For providers outside the scope of the health care provider network rule, the department and self-insured employers may reimburse for treatment beyond the initial office or emergency room visit.

AMENDATORY SECTION (Amending WSR 12-02-058, filed 1/3/12, effective 2/3/12)

WAC 296-20-01020 Health care provider network enrollment. (1) The department or its delegated entity will review the provider's application, supporting documents, and any other information requested or accessed by the department that is relevant to verifying the provider's application, clinical experience or ability to meet or maintain provider network requirements.

(2) The department will notify providers of incomplete applications, including when credentialing information obtained from other sources materially varies from information on the provider application. The provider may submit a supplement to the application with corrections or supporting documents to explain discrepancies within thirty days of the date of the notification from the department. Incomplete applications will be considered withdrawn within forty-five days of notification.

(3) The provider must produce adequate and timely information and timely attestation to support evaluation of the application. The provider must produce information and respond to department requests for information that will help resolve any questions regarding qualifications within the time frames specified in the application or by the department.

(4) The department's medical director or designee is authorized to approve, deny, or further review complete applications consistent with department rules and policies. Providers will be notified in writing of their approval or denial, or that their application is under further review within a reasonable period of time.

(5) Providers who meet the minimum provider network standards, have not been identified for further review, and are in compliance with department rules and policies, will be approved for enrollment into the network.

(6) Enrollment of a provider is effective no earlier than the date of the approved provider application. The department and self-insured employers will not pay for care provided to workers prior to application approval, regardless of whether the application is later approved or denied, except as provided in ((~~this~~)) subsection (7) of this section.

(7) The department and self-insured employers may pay a provider without an approved application only when:

(a) The provider is outside the scope of the provider network per WAC 296-20-01010; or

(b) The provider is provisionally enrolled by the department after it obtains:

(i) Verification of a current, valid license to practice;

(ii) Verification of the past five years of malpractice claims or settlements from the malpractice carrier or the results of the National Practitioner Data Bank (NPDB) or Healthcare Integrity and Protection Data Bank (HIPDB) query; and

(iii) A current and signed application with attestation.

(c) A provider may only be provisionally enrolled once and for no more than sixty calendar days. Providers who have previously participated in the network are not eligible for provisional enrollment.

AMENDATORY SECTION (Amending WSR 08-02-020, filed 12/21/07, effective 1/21/08)

WAC 296-20-02705 What are treatment and diagnostic guidelines and how are they related to medical coverage decisions? (1) Treatment and diagnostic guidelines are ((~~recommendations~~)) developed by the department for the diagnosis or treatment of accepted conditions. These guidelines are ((~~intended to guide~~)) developed to give providers ((~~through the~~)) a range of the many treatment or diagnostic options available for a particular medical condition. Treatment and diagnostic guidelines are a combination of the best available scientific evidence and a consensus of expert opinion.

(2) The department may develop treatment or diagnostic guidelines to improve outcomes for workers receiving covered health services. As appropriate to the subject matter, the department may develop these guidelines in collaboration with the ((~~department's formal advisory~~)) following committees:

• The industrial insurance medical advisory committee;

• The industrial insurance chiropractic advisory committee.

• The Washington state pharmacy and therapeutics committee.

• The Washington state health technology assessment clinical committee.

(3) In the process of implementing these guidelines, the department may find it necessary to make a formal medical coverage decision on one or more of the treatment or diagnostic options. The department, not the advisory committees, is responsible for implementing treatment guidelines and for making coverage decisions that result from such implementation.

(4) Network providers are required to follow the department's evidence-based coverage decisions, treatment guidelines, and policies.

WSR 12-23-023
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 13, 2012, 11:45 a.m., effective December 14, 2012]

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

Purpose: Revises WAC 181-78A-100. Clarifies the relationship between professional educator standards board approval and other national accreditation. Clarifies that delays in review for approval is not permitted.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-100].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 12-20-063 on October 2, 2012.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: November 9, 2012.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-12-033, filed 5/29/12, effective 6/29/12)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to programs in the revision of their existing programs.

(1) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and ((~~the~~)) national ((~~Council for the~~)) accreditation ((~~of Teacher Education (NCATE)~~)) organizations as such agreement relates to the ((~~NCATE~~)) accreditation cycle and allow ((~~NCATE~~)) CAEP accredited colleges/universities to follow the ((~~NCATE~~)) CAEP schedule for their state site visit. ((~~Non-NCATE~~)) Non-CAEP accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2). The professional educator standards board will not consider requests for site visit delays.

(2) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards as follows:

(a) At least six months prior to a scheduled on-site visit, the institution shall submit an institutional report that provides evidence and narrative, as needed, that addresses how the program approval standards are met for each preparation program undergoing review. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the professional educator standards board as evidence pertinent to the program approval process.

(b) The institutional report shall be reviewed by an off-site team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) A designated professional educator standards board staff member who shall serve as team leader.

(vi) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The professional educator standards board liaison for that institution may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(c) The review of the off-site team shall identify additional evidence and clarifications that may be needed to provide adequate support for the institutional report.

(d) The report of the off-site team shall be submitted to the institution, which shall provide an addendum to the institutional report no later than five weeks preceding the on-site review.

(e) The on-site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board. The team shall be comprised of members of the off-site review team.

(f) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(g) Institutions may submit a reply to the report within two weeks following receipt of the report. The reply may address issues for consideration, including a request for appeal per this subsection (g), limited to ((~~factual errors,~~)) evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

(h) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(1).

(i) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(3) Institutions seeking ((~~National~~)) Council for the Accreditation of ((~~Teacher Education~~)) Educator Preparation, Council for Accreditation of Counseling and Related

Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

WSR 12-23-028
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 13, 2012, 4:42 p.m., effective December 14, 2012]

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

Purpose: Amends WAC 181-87-050 to establish misrepresentation of teacher assessments for certification[,] constitutes unprofessional practice and is subject to investigation by the office of professional practice.

Citation of Existing Rules Affected by this Order: Amending X [WAC 181-87-050].

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 12-20-015 on September 24, 2012.

Changes Other than Editing from Proposed to Adopted Version: Adopted as written in OTS-5000 at public hearing during PESB board meeting November 8, 2012.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: November 8, 2012.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-87-050 Misrepresentation or falsification in the course of professional practice. Any falsification or deliberate misrepresentation, including omission, of a material fact by an education practitioner concerning any of the following is an act of unprofessional conduct:

(1) Statement of professional qualifications.

(2) Application or recommendation for professional employment, promotion, certification, or an endorsement.

(3) Application or recommendation for college or university admission, scholarship, grant, academic award, or similar benefit.

(4) Representation of completion of inservice or continuing education credit hours.

(5) Evaluations or grading of students and/or personnel.

(6) Financial or program compliance reports submitted to state, federal, or other governmental agencies.

(7) Information submitted in the course of an official inquiry by the superintendent of public instruction related to the following:

(a) Good moral character or personal fitness.

(b) Acts of unprofessional conduct.

(8) Information submitted in the course of an investigation by a law enforcement agency or by child protective services regarding school related criminal activity.

(9) Assessments leading to certification.

(10) An education practitioner who aids, encourages, and/or abets another educator in any falsification or deliberate misrepresentation, including omission, of a material fact in conjunction with the acts listed above commits misrepresentation in the course of professional practice.

WSR 12-23-043
PERMANENT RULES
GAMBLING COMMISSION

[Order 681—Filed November 16, 2012, 9:48 a.m., effective January 1, 2013]

Effective Date of Rule: January 1, 2013.

Purpose: This rule change sets out how individuals can review their criminal history record information in our files and brings our rules current with state law; including ESB 6296, which was passed during the 2012 session to allow criminal justice agencies to provide copies of criminal history record information and charge reasonable fees for fingerprinting (to verify identities of requestors) or copies.

Reasons supporting proposal: See above.

Citation of Existing Rules Affected by this Order: Amending WAC 230-21-001.

Statutory Authority for Adoption: RCW 9.46.070 and 10.97.080.

Adopted under notice filed as WSR 12-19-052 on September 13, 2012.

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

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

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

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

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

Date Adopted: November 15, 2012.

Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending Order 616, filed 9/17/07, effective 1/1/08)

WAC 230-21-001 Purpose. The purpose of this chapter is to ensure the Washington state gambling commission complies with the Public Records Act, chapter 42.56 RCW and the Criminal Records Privacy Act, chapter 10.97 RCW.

REQUESTING CRIMINAL HISTORY RECORD INFORMATION

NEW SECTION

WAC 230-21-030 Inspecting your criminal history record information. You may inspect your criminal history record information (CHRI) held by us at our administrative office, during normal business hours, Monday through Friday, except for legal holidays. You must request your CHRI in writing on the form we require. CHRI is defined in RCW 10.97.030.

(1) Before reviewing or obtaining copies of your CHRI, you must provide at least two forms of identification, one of which includes your photograph, such as your state issued identification, state issued driver license, or passport. Alternatively, you must provide fingerprints that will be taken at our administrative office and will be used for verification purposes.

(2) We will charge a reasonable fee for fingerprinting and providing a copy of your CHRI.

(3) After we verify your identity, we will notify you when you will be allowed to review your records.

(4) You will be allowed a reasonable period of time to examine your CHRI at our administrative office.

(5) If you need assistance, you may designate your counsel, interpreter, or other appropriate person to help you. You must consent, on the form we require, for the person to assist you.

(6) If you would like to make corrections or challenge your CHRI, you must do so in accordance with RCW 10.97.-080.

WSR 12-23-049
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 11-09—Filed November 16, 2012, 11:16 a.m., effective December 17, 2012]

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

Purpose: As signed into law, chapter 70.275 RCW, Mercury-containing lights—Proper disposal, requires producers of mercury-containing lights to establish a product stewardship program for residential lighting. The purpose of this rule is to clarify:

- Responsibilities of producers, wholesalers, retailers, distributors, and electric utilities to safely manage mercury-containing lights sold in or into Washington state.
- Program requirements, such as developing a product stewardship plan, outreach and education efforts, and annual reporting requirements.
- Requirements for collecting, transporting, processing and recycling mercury-containing lights.
- How producers will fully fund the product stewardship program.
- Other requirements necessary to implement the program such as definitions and enforcement.

Statutory Authority for Adoption: Chapter 70.275 RCW, Mercury-containing lights—Proper disposal.

Adopted under notice filed as WSR 12-14-036 on June 26, 2012.

Changes Other than Editing from Proposed to Adopted Version:

- Clarified that the department approved standard plan for the mercury-containing lights product stewardship program is the department-contracted program. The standard plan will be implemented by a stewardship organization contracted by the department.
- Provided clarification that the program (either standard or independent plan) is to be fully funded using market share or other equitable funding structure.
- The collection system will handle all collected lights as universal waste.
- The requirements for content in the plan were streamlined by reducing the amount of information in the plan and annual reports. Detailed processor information will be provided in annual compliance audits.
- Removal of service provider violation, warning and penalties; noncompliance with rule or plan requirements will result in removal of the service provider from the program.

A final cost-benefit analysis is available by contacting Kara Steward, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6250, fax (360) 407-6102, e-mail kara.steward@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 23, 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: November 16, 2012.

Ted Sturdevant
Director

Chapter 173-910 WAC

MERCURY-CONTAINING LIGHTS PRODUCT STEWARDSHIP PROGRAM

GENERAL REQUIREMENTS

NEW SECTION

WAC 173-910-010 Purpose. (1) Washington state law requires establishment of a convenient and environmentally sound product stewardship program for mercury-containing lights throughout Washington state by January 1, 2013. Every producer of mercury-containing lights sold in or into Washington state for residential use must fully finance and participate in the product stewardship program. Such a system is essential to collect spent mercury lighting from covered entities which, when improperly disposed, releases mercury that threatens human health and the environment.

(2) This chapter implements Mercury-containing lights—Proper disposal, chapter 70.275 RCW.

(3) Washington state law established a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

NEW SECTION

WAC 173-910-020 Applicability. This chapter applies to:

(1) Any producer of mercury-containing lights sold in or into Washington state, as defined in this chapter.

(2) A stewardship organization operating an approved product stewardship program under contract with the department.

(3) Any stewardship organization operating an approved product stewardship program for any producer or group of producers.

(4) Any covered entities as defined in this chapter.

(5) Collectors of mercury-containing lights including those participating in a product stewardship plan approved under this chapter.

(6) Transporters of mercury-containing lights participating in a product stewardship plan approved under this chapter.

(7) Processors of mercury-containing lights under a product stewardship plan approved under this chapter.

(8) Any retailer, electric utility, or other person that gives away, offers for sale, or sells mercury-containing lights in or into Washington state for residential use.

DEFINITIONS

NEW SECTION

WAC 173-910-100 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Accumulation point" means where mercury-containing lights from curbside or mail-back programs are accumulated for a product stewardship plan approved by the department.

"Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

"Collector" means an entity that is licensed to do business in Washington state and that gathers mercury-containing lights from covered entities for the purpose of recycling under a product stewardship plan approved by the department and meets the collector requirements in WAC 173-910-520. Examples of collectors include, but are not limited to, drop off locations, household hazardous waste facilities, collection sites, curbside services, mail-back services, accumulation points, and collection events.

"Compliance audit report" means the report of a comprehensive third-party audit for each processing facility in the product stewardship program.

"Covered entities" means:

(a) A single-family or a multifamily household generator and persons that deliver no more than fifteen mercury-containing lights to registered collectors for a product stewardship program during a ninety-day period; and

(b) A single-family or a multifamily household generator and persons that utilize a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and that discard no more than fifteen mercury-containing lights into those programs during a ninety-day period.

"Department" means the department of ecology.

"Department's annual fee" means the sum total of five thousand dollars paid to the department for each producer participating in a mercury-containing lights product stewardship program to fund department administration, oversight, and enforcement costs.

"Distributor" is an agent who supplies goods to stores and other businesses that sell to consumers.

"Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in facilities that meet all applicable federal, state, and local requirements.

"Fiscal growth factor" means the average growth in state personal income for the prior ten fiscal years (chapter 43.135 RCW).

"Fully finance and participate" means the obligation of each producer of mercury-containing lights sold in or into

Washington to fund its share of program costs and join in an approved product stewardship program.

"Hazardous substances" or **"hazardous materials"** means those substances or materials identified by rules adopted under chapter 70.105 RCW.

"Independent plan" means a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.

"Mail-back program" means the use of a prepaid postage container transported by the United States Postal Service or a common carrier, using sealable packaging and shipping materials that are designed to prevent the release of mercury into the environment by volatilization or any other means, to return mercury-containing lights for a product stewardship plan approved by the department.

"Market share" means the portion of mercury-containing lights sold in Washington state representing a producer's share of all mercury-containing lights products sold in Washington state.

"Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

"Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

"Premium services" means collection of mercury-containing lights through systems that may include additional fees to cover the collection costs not paid by the product stewardship program, examples include curbside collection or mail-back services.

"Processing" means storage and handling of mercury-containing lights for materials recovery, recycling, or preparing for final disposition. Processing must occur at facilities that meet all applicable federal, state, and local requirements.

"Processor" means an entity engaged in disassembling or dismantling mercury-containing lights to recover materials for recycling or disposal.

"Producer" means a person that meets any one of the following conditions:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, except for persons whose primary business is retail sales;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this definition and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this definition do not apply, makes or made an unbranded mercury-containing light that is offered for sale or sold in or into Washington state; or

(d) Offers for sale, sells or has sold at wholesale or retail a mercury-containing light and does not have legal ownership of the brand but chooses to fulfill the responsibilities of the producer for that product.

"Producer's share cost" means each participating producer's share of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.

"Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and collecting, transporting, processing, recycling, and final disposition of mercury-containing lights.

"Product stewardship plan" or **"plan"** means a detailed plan describing the manner in which a product stewardship program will be implemented. A product stewardship plan can either be the standard plan or an independent plan.

"Product stewardship program" or **"program"** means the methods, systems, and services financed by producers of mercury-containing lights that addresses collecting, transporting, processing, recycling, and final disposition of mercury-containing lights generated by covered entities.

"Recycling" means transforming or remanufacturing mercury-containing lights into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting mercury-containing lights with or without other waste.

"Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

"Retailer" means a person that offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

"Rural" means areas without commercial centers or areas with widely dispersed population.

"Service providers" means collectors, transporters, and processors participating in a stewardship program.

"Stakeholder" means a person that may have an interest in or be affected by a product stewardship program.

"Standard plan" means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a department-contracted stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization under contract with the department.

"Stewardship organization" or **"organization"** means a producer or group of producers that operate a product stewardship program, an organization designated by a producer or group of producers to act as the agent on behalf of each producer to operate a product stewardship program, or an organization contracted by the department to operate a product stewardship program.

"Transboundary" means crossing a provincial, territorial, or national boundary or border.

"Transporter" means an entity that transports mercury-containing lights from collection sites, accumulation points, or collection services to processors or other locations for the

purpose of recycling, but does not include any entity or person that hauls their own mercury-containing lights.

"Wholesale" means buying and selling goods, generally in original packages, on a large scale in parcels, usually from a manufacturer to a retail, commercial, or industrial client.

PRODUCER REQUIREMENTS

NEW SECTION

WAC 173-910-210 Producers of mercury-containing lights. (1) Beginning January 1, 2013, any producer of mercury-containing lights whose mercury-containing lights are offered for sale or sold in or into Washington state must fully finance and participate in a department-approved product stewardship program for mercury-containing lights.

(2) Each producer must participate in a product stewardship program by:

(a) Funding its producer share cost of the standard plan and program operated by the department-contracted stewardship organization; or

(b) Funding its producer share cost of and operating, either individually or jointly, an independent plan and program approved by the department.

(3) Producers must pay all administrative and operational costs associated with the standard program or the independent program in which they participate, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a stewardship organization must finance the costs of transporting and processing mercury-containing lights from the point of accumulation. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations.

(4) The producer must satisfy the following requirements:

(a) Submit data to the department or stewardship organization to enable a reasonable estimate to be determined of each producer's share cost of the mercury-containing lights product stewardship program;

(b) Submit market share data to the department to determine market share in the event more than one approved product stewardship plan is operating;

(c) Meet its financial obligations to the plan, which includes the department's annual fee;

(d) Comply with producers' requirements as described in the plan;

(e) Participate in a fully implemented plan; and

(f) Take actions required to correct violations.

NEW SECTION

WAC 173-910-220 Producer violation and warning. (1) There are three types of producer violations:

(a) Participation violation for not participating in an approved product stewardship plan.

(b) Implementation violation for not implementing an approved product stewardship plan.

(c) Plan/report violation for not submitting a product stewardship plan, plan update, or annual report.

(2) Department issued warning letters will:

(a) Be issued for any of the three producer violations, except that a penalty will be issued for a first implementation violation concurrent with a warning letter.

(b) Be sent to the producer by certified mail.

(c) Include a copy of the requirements to let the producer know what they must do to be in compliance with this chapter.

(d) Include the time period within which the producer must be in compliance in order to not incur a penalty.

NEW SECTION

WAC 173-910-230 Producer violation notices and penalties.

Table 200
Producer Violation Notices and Penalties

Notice	Participation Violation *Failure to participate in an approved plan*	Implementation Violation *Failure to implement an approved plan*	Plan/Report Violation *Failure to submit plan, update plan, change plan or submit annual report*
First Violation Notice	Warning letter to participate within 60 days	Automatic penalty of up to $5,000, plus warning letter regarding subsequent penalties	Warning letter to comply within 60 days
Second Violation Notice	Penalty of up to $1,000 per day starting 60 days after receipt of warning letter	Penalty of up to $10,000 for each 30 days of noncompliance starting 30 days after receipt of warning letter	Penalty of up to $10,000 per day starting 60 days after receipt of warning letter
If Compliance is Achieved Within 30 Days of Second Violation Notice	Penalty reduced by 50% if compliance is achieved by day 90	Penalty reduced by 50% if compliance is achieved by day 30	Penalty reduced by 50% if compliance is achieved by day 90

Notice	Participation Violation *Failure to participate in an approved plan*	Implementation Violation *Failure to implement an approved plan*	Plan/Report Violation *Failure to submit plan, update plan, change plan or submit annual report*
Third Violation and Subsequent Notices	Penalty of up to $1,000 per day for every day of noncompliance to be issued every 60 days	Penalty of up to $10,000 for every 30 days of noncompliance to be issued every 30 days	Penalty of up to $10,000 per day for every 30 days of noncompliance to be issued every 30 days

(1) **Participation penalties** apply to producers not participating in an approved product stewardship plan.

(a) Producers selling mercury-containing lights in or into the state for residential use that are not participating in an approved product stewardship plan will receive a warning letter, or first violation notice, to participate in an approved plan within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers not participating in an approved product stewardship plan that continue to sell mercury-containing lights in or into the state for residential use sixty days after receiving the warning letter will receive a penalty, or second violation notice, of up to one thousand dollars for each violation; a violation is one day of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to not participate in an approved product stewardship plan will receive penalties of up to one thousand dollars per day of noncompliance starting from the date of the second violation notice. This penalty will be issued after each subsequent period of sixty days of noncompliance.

(2) **Implementation penalties** apply to producers that fail to implement their approved product stewardship plan.

(a) Producers not implementing an approved product stewardship plan will receive a penalty for the first violation of up to five thousand dollars, plus a warning letter to implement its approved plan within thirty days or incur additional penalties. The warning letter will include compliance requirements and notification that the requirements must be met within thirty days.

(b) Producers that fail to implement their product stewardship plan will receive a penalty, or second violation notice, of up to ten thousand dollars for the thirty days of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to implement their product stewardship plan will receive penalties of up to ten thousand dollars for each subsequent thirty days of noncompliance.

(3) **Plan/report penalties** apply to producers that fail to submit a product stewardship plan, update, or change the plan when required, or fail to submit an annual report.

(a) Producers not submitting the plan, plan update, or report will receive a warning letter, or first violation notice, to submit the plan or report within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers that fail to submit the plan, plan update, or report will receive a penalty, or second violation notice, of up to ten thousand dollars for each violation; a violation is one day of noncompliance starting with the first day of notice of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to submit the plan, plan update, or report will receive penalties of up to ten thousand dollars per day issued after each subsequent period of thirty days of noncompliance.

(4) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(5) To correct a violation the producer must:

(a) Meet the compliance requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(6) Penalties applied to the stewardship organization in WAC 173-910-340 for the same violation will not be applied to producers.

(7) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

STEWARDSHIP ORGANIZATION REQUIREMENTS

NEW SECTION

WAC 173-910-310 Stewardship organization requirements. (1) The department-contracted stewardship organization will implement the department-approved standard plan and independent stewardship organizations will implement department-approved independent plans.

(2) Stewardship organizations will:

(a) Estimate the total program cost for the coming year, including the department's annual fee for all participating producers;

(i) The department's annual fee for each stewardship organization is the sum total of five thousand dollars paid to the department for each producer participating in the stewardship program.

(ii) The department's annual fee for the department-contracted standard plan will be adjusted by the annual fiscal growth factor calculated under chapter 43.135 RCW.

(iii) For implementation of the fiscal growth factor, the base year for all mercury-containing lights department annual

fees will be fiscal year 2011 ending June 30, 2011. In the base year, the fiscal growth factor will be zero.

(b) Determine the producer share cost based on market share or other equitable formula for program costs for each participating producer, including their share of the department's annual fee;

(c) Submit the program cost and producer share cost to the department for review, adjustment, and approval;

(d) Invoice each producer for their department-approved producer share cost for the product stewardship program, each producer must pay their invoiced amount within sixty days of receipt of the invoice; and

(e) Remit to the department the sum total of the department's annual fee from all participating producers; this fee is due on the first of January for each year of implementation.

(3) Producers may request department review of their producer share cost assessment:

(a) The producer must pay the total invoiced amount to the stewardship organization within sixty days of receipt of the invoice.

(b) The producer may submit a written request to the director of the department to review the producer share cost assessment:

(i) The request for review must be delivered to the department within fourteen calendar days of the date on the invoice.

(ii) The written request must explain why the estimate is unreasonable based on the evidence available to the product stewardship program and the department.

(iii) Within thirty calendar days of receipt of the written request in (b)(i) of this subsection, the director or the director's designee will review the request.

(iv) The director may request a revision of producer share cost assessments if the producer request is determined to be correct:

(A) Stewardship organizations must recalculate the producer share cost assessment for each producer to be approved by the department; and

(B) Once the recalculated producer share costs are approved by the department, the stewardship organization must send refunds or assess additional charges to plan participants per the revision.

(4) Stewardship organizations for a plan must begin implementation of the plan no later than January 1st of the calendar year following approval of the plan by the department.

(5) Stewardship organizations must implement the approved plan. Updates to the plan will follow the process outlined in WAC 173-910-460.

(6) Stewardship organizations, as agents of their participating producers, are required to:

(a) Annually register producers, collectors, transporters, and processing facilities participating in the stewardship plan and report this information to the department.

(i) Registration includes documentation that each producer, collector, transporter, and processing facility is meeting the requirements of this chapter.

(ii) Provide regular updates to the department for producers, collectors, transporters, and processing facilities participating in the plan.

(b) Submit a product stewardship plan and required plan updates to the department as required in WAC 173-910-440.

(c) Annually report to the department as required in WAC 173-910-430.

(d) Monitor the compliance of all parties participating in the stewardship plan and report compliance issues to the department.

(e) Finance all administrative and operational costs associated with their program, including collection, transport, and processing of mercury-containing lights and the department's annual fee for all participating producers.

(f) Finance the costs of transporting and processing mercury-containing lights from accumulation points for curbside and mail-back collection programs.

(7) In the event that there is more than one approved product stewardship plan, each stewardship organization operating a department-approved product stewardship plan must recover their share of mercury-containing lights based on the combined market share of all producers participating in the stewardship organization's approved plan.

(8) The department will determine market share for stewardship organizations in the event that there is more than one approved product stewardship plan.

(9) Stewardship organizations must collaborate with state government, local governments, electric utilities, retailers, collectors, transporters, processing facilities, and citizens in the development and implementation of public education, outreach, and marketing efforts. Education and outreach efforts include, but are not limited to:

(a) Development of a program web site and social media services;

(b) Providing point of sale educational materials, like posters and brochures; and

(c) Publishing media releases in print, radio, and television.

(10) All mercury-containing lights collected by a product stewardship program or other collection programs must be recycled.

(11) If the department determines a stewardship organization is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-330 and 173-910-340.

(12) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

NEW SECTION

WAC 173-910-320 Stewardship collection system. (1) Stewardship organizations must work with the department, local government officials, retailers, electric utilities, and citizens to establish a convenient collection system for covered entities to deliver their mercury-containing lights into the program.

(2) Convenient collection service will:

(a) County: Provide collection services for mercury-containing lights for each county of the state;

(b) City: Provide additional collection services in each city or town with a population greater than ten thousand; and

(c) Rural: Consult with rural counties that do not have logical in-county collection sites to provide convenient alternative arrangements.

(3) This system may provide collection through:

(a) The nearest commercial centers, solid waste sites, retail businesses, household hazardous waste, or other facilities;

(b) Collection events;

(c) Curbside collection, a premium service;

(d) Mail-back service, a premium service; or

(e) A combination of these options.

(4) Stewardship organizations must register collectors and provide updated collector information to the department, including:

(a) Contact information, including site name, operator name, physical address, telephone number, and hours of operation;

(b) Identify prospective collection sites not approved to participate in the program. Provide copies to the department of all written correspondence related to prospective collection sites that were not approved. Notify the department, within five days of denial of a prospective collection site, including the reason for denial.

(5) Each collection site or service must accept up to fifteen mercury-containing lights from covered entities at no charge, except for premium services, when lights are dropped off or delivered.

(6) Each collection site or service must:

(a) Comply with WAC 173-303-573 as small quantity handlers of universal waste for lamps;

(b) Collect and store mercury-containing lights in a structurally sound container that, when sealed, is designed to prevent the escape of mercury into the environment by volatilization or any other means;

(c) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light; and

(d) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety.

(7) All mercury-containing lights collected by a product stewardship program must be recycled.

NEW SECTION

WAC 173-910-330 Stewardship organization violation and warning. (1) There are two types of stewardship organization violations:

(a) Implementation violation for not implementing an approved product stewardship plan.

(b) Plan/report violation for not submitting a product stewardship plan, plan update or annual report.

(2) Department issued warning letters will:

(a) Be issued for either of the two stewardship organization violations, except that a penalty may be issued for a first implementation violation concurrent with a warning letter.

(b) Be sent to the stewardship organization by certified mail.

(c) Include a copy of the requirements to let the stewardship organization know what they must do to be in compliance with this chapter.

(d) Include the time period within which the stewardship organization must be in compliance in order to not incur a penalty.

NEW SECTION

WAC 173-910-340 Stewardship organization penalty and appeal. (1) Stewardship organizations that fail to implement their program or submit a plan, updated plan, or annual report, or that fail to comply with a warning letter, will receive penalties in the amounts provided in WAC 173-910-230 multiplied by the number of producers participating in the stewardship organization.

(2) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(3) To correct a violation the stewardship organization must:

(a) Meet the requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(4) If the stewardship organization, as the agent of its member producers, does not pay the penalties issued against it when due to the department, each participating producer will be responsible for its share of the total penalties.

(5) Penalties applied to the producers in WAC 173-910-230 for the same violation will not also be applied to stewardship organizations.

(6) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

PLAN AND REPORT REQUIREMENTS

NEW SECTION

WAC 173-910-410 Product stewardship plans. (1) Stewardship organizations must submit the proposed product stewardship plan to the department by January 1st of the year prior to the planned calendar year when the plan will be implemented. See WAC 173-910-420 for plan content.

(2) Product stewardship plans must provide a program for the collection, transportation, and processing of mercury-containing lights from covered entities in Washington state.

(3) The product stewardship plan must meet the content requirements of WAC 173-910-420.

(4) Prior to implementation, the plan must be approved by the department.

(5) Stewardship organizations must be authorized to submit and implement the plan for each participating producer.

NEW SECTION

WAC 173-910-420 Plan content. Product stewardship plans must contain the following information:

(1) **Overall plan requirements:** The plan must include:

(a) Names and contact information for all participating producers, including names of brands or brand labels used by specific producers;

(b) The number of mercury-containing lights sold annually in or into the state by producers participating in the plan;

(c) The types of mercury-containing lights that the program will accept; and

(d) Details on the management and organization of the stewardship organization.

(2) **Description of the financing system:** The plan must include a description of how the program will be funded by the producers and how compensation is paid to collectors, transporters, and processing facilities for all services provided to a plan and that payments to service providers will be made within an appropriate period of time from date of shipment or other time frame defined in contractual arrangements. Stewardship organizations will:

(a) Provide confirmation that revenues and expenditures applicable to this program will be allocated in accordance with generally accepted accounting principles (GAAP).

(b) Commit to providing an annual financial audit of the stewardship organization conducted by an independent certified public accountant.

(3) **Use of Washington state businesses:** The plan must explain how it seeks to use businesses within the state, including utilities, retailers, charities, household hazardous waste facilities, processing facilities, recycling facilities, and collection and transportation services for implementation of the plan including existing curbside collection services and existing mail-back services for implementation of the plan.

(4) **Plan goals:** The plan will provide goals for the collection of mercury-containing lights for five years of operation, including:

(a) Total number of mercury-containing lights sold in or into the state;

(b) An estimate of the amount of mercury-containing lights available for collection from covered entities; and

(c) Annual program goals for collection of mercury-containing lights from covered entities for the next five years.

(5) **Collectors:** The plan must include the following information about collectors participating in the plan:

(a) The type of collection services in the plan, including curbside collection activities, household hazardous waste facilities, drop-off locations, collection events, and accumulation points for curbside or mail-back collection;

(b) Registration information for collectors participating in the plan as required in WAC 173-910-520(1), including accumulation points used for curbside or mail-back collection;

(c) A written statement from each collector ensuring that the collector will comply with the requirements in WAC 173-910-520;

(d) A statement that collection sites will be:

(i) Staffed during operating hours; and

(ii) Open during regularly scheduled hours and on an ongoing basis.

(e) A description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as appropriate collection mechanisms;

(f) A statement identifying how quickly collection containers will be provided once containers reach capacity;

(g) A description of the communication and outreach process to answer questions, provide supplies, or provide technical assistance to collectors;

(h) A description of the technical assistance to be provided to collection sites, including written instructions on how to participate in the program and how to appropriately handle and store mercury-containing lights;

(i) A description of the packaging and shipping materials that will be used when collecting, accumulating, storing, and transporting mercury-containing lights to minimize the release of mercury into the environment and to minimize breakage; and

(j) Drafts of spill and release response plan and worker safety plan required in WAC 173-910-520.

(6) **Transporters:** The plan must include information about transporters participating in the plan, including:

(a) Registration information for transporters participating in the plan, including names, addresses, and contact information.

(b) A written statement from each transporter ensuring that the transporter will comply with the requirements in WAC 173-910-530.

(7) **Processing facilities:** The plan must include information about processing facilities participating in the plan, including:

(a) Registration information for processors participating in the plan, including names, addresses, contact information and hours of operation;

(b) A description of the methods used to process mercury-containing lights at each processing facility in the program; and

(c) Compliance audit reports for each processing facility participating in the plan completed by a qualified third party. The compliance audit will research, review, and report on the following:

(i) Compliance with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of mercury-containing lights, components, parts, and materials and disposal of residuals. These include, but are not limited to, applicable legal requirements relating to:

(A) Waste and recyclables processing, storage, handling, and shipping;

(B) Air emissions and waste water discharge, including storm water discharges;

(C) Worker health and safety; and

(D) Transboundary movement of mercury-containing lights, components, materials, waste, or scrap for reuse, recycling, or disposal.

(ii) Information on financial penalties, regulatory orders, or violations the processing facility received in the previous three years; and

(iii) Any other information requested by the department.

(8) **Recordkeeping:** The plan must include procedures for how the stewardship organization will collect and maintain records to meet and demonstrate compliance with the recordkeeping requirements of this chapter. At a minimum, the stewardship organization will track the following information:

(a) Total number of mercury-containing lights sold in or into Washington state for all producers participating in the plan.

(b) The types of mercury-containing lights collected by the program.

(c) List of all collection sites and collection services, including curbside and mail back.

(d) Identification of transporters and processing facilities participating in the plan.

(e) Mercury-containing lights collected, transported, and processed for the plan, including:

(i) Total mercury-containing lights, by weight in pounds, collected from individual collection sites, collection services, curbside and mail back.

(ii) Final destination and quantities of lights processed and disposed.

(f) Education efforts for consumers, retailers, utilities, collectors, transporters, and processors, including assessments of the effectiveness of these efforts.

(g) Efforts to promote the mercury-containing lights collection program.

(9) **Implementation timeline:** The plan must include a timeline showing when each of the following will occur and a detailed description of each activity including, but not limited to:

(a) Start-up of the collection and processing efforts;

(b) Education efforts for consumers, retailers, collectors, transporters, and processors;

(c) Outreach efforts for the mercury-containing lights collection program; and

(d) Continual progress toward collection of spent mercury-containing lights.

(10) **Education, public outreach, and marketing:** A description of how the plan will meet the public education, outreach and marketing requirements, including:

(a) How it will provide information about where and how to deliver their mercury-containing lights to a product stewardship program collector at the end of the product's life;

(b) Providing a web site and toll-free number that gives information about the product stewardship program in sufficient detail regarding how and where to drop off mercury-containing lights into the product stewardship program, and collaborating with the department to provide information necessary to keep the 1-800-RECYCLE on-line data base up to date;

(c) Describing the outreach method or methods used;

(d) How it will ensure outreach to the public throughout the state;

(e) How it will provide outreach materials for educating the public to all collectors used by the plan;

(f) Explaining how the plan will coordinate education, public outreach, and marketing with other approved product stewardship plans;

(g) Explaining how the plan will coordinate on education, public outreach, and marketing with retailers, distributors, wholesalers, and electric utilities; and

(h) Explain the public review process implemented by the stewardship organization, the public comments received by the stewardship organization, and how the stewardship organization addressed those comments.

(11) **Other information** deemed necessary by the department to determine compliance with this chapter.

(12) Producers submitting information to the department may request confidential treatment under RCW 43.21A.160.

NEW SECTION

WAC 173-910-430 Annual reports. On June 1st of each program year each stewardship organization must file an annual report with the department for the preceding calendar year's program. The department will review the report and notify the stewardship organization of any deficiencies that need to be addressed. The annual report must include the following information:

(1) **Contact information:** Identify the stewardship organization and the producers participating in the program, including any updated contact information. The list of producer brands sold in or into the state. The total number of mercury-containing lights sold in or into the state by participating producers in the previous year.

(2) **Executive summary:** Provide a description of the mercury-containing lights collection and recycling efforts during the reporting period. Include anticipated steps, if needed, to improve performance and a description of challenges encountered during the reporting period and how they will be addressed.

(3) **Program description:** Summarize the mercury-containing lights product stewardship program, providing details on the collection, transport, and recycling of mercury-containing lights.

(4) **Program goals:** State the goals from the plan, the baseline from which goals were measured, and report on achievement during the reporting period, including:

(a) Describe any adjustments to goals stated in the approved stewardship plan for the upcoming reporting period and accompanying rationale for those changes.

(b) Describe how the program met its goal for the collection of unwanted mercury-containing lights and, if not, what changes have been made or will be made in the next year to meet its goal.

(c) Identify the total mercury-containing lights, by weight in pounds, collected for the preceding program year including documentation verifying collection and processing of that material, including mercury-containing lights collected, reported by county.

(5) **Collection system:** Names, locations, contact information for collection sites and services operating in the state in the prior program year and the parties who operated them:

(a) In each county;

(b) For each city with a population greater than ten thousand;

(c) For collection events, curbside collection, or mail-back services; and

(d) Total mercury-containing lights, by weight in pounds, received from each collector.

(6) **Processing facility information:** Identify all processing facilities used, including the name, address, and contact information by providing the following:

(a) Total program mercury-containing lights, by weight in pounds, received by each processing facility;

(b) A description of the methods used by each processing facility to process the mercury-containing lights;

(c) Compliance audit reports for each processing facility participating in the plan completed by a qualified third party. The compliance audit will research, review, and report on the following:

(i) Compliance with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of mercury-containing lights, components, parts, and materials and disposal of residuals. These include, but are not limited to, applicable legal requirements relating to:

(A) Waste and recyclables processing, storage, handling, and shipping;

(B) Air emissions and waste water discharge, including storm water discharges;

(C) Worker health and safety; and

(D) Transboundary movement of mercury-containing lights, components, materials, waste, or scrap for reuse, recycling, or disposal.

(ii) Information on financial penalties, regulatory orders, or violations the processing facility received in the previous three years; and

(iii) Any other information requested by the department.

(7) **Education and outreach:** Efforts that were undertaken by the stewardship organization regarding how and where to drop off mercury-containing lights into the product stewardship program. Include an assessment of the effectiveness of these efforts and changes to be implemented in the next year.

(8) **Financial report:** Financial audit reports for the stewardship organization completed by a qualified third party.

(9) **Other information** deemed necessary by the department to determine compliance with this chapter.

(10) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

NEW SECTION

WAC 173-910-440 Plan and report submittal. (1) Plans must include the plan content requirements in WAC 173-910-420.

(a) New product stewardship plans must be submitted by January 1st for implementation in the following calendar year.

(b) The first update of an approved product stewardship plan is required two years after approval and implementation, by July 1st of the second year of implementation.

(c) Second and subsequent updates of an approved product stewardship plan are required every four years, by July 1st of each subsequent third year of implementation.

(d) The department will post product stewardship plans and updates on the department's web site for public review. The department will provide public review comments to the stewardship organization.

(2) Annual reports must include the content requirements in WAC 173-910-430.

(a) Annual reports must be submitted by June 1st for the prior calendar year.

(b) The department may request additional information or clarification during the review of annual reports. If the department determines that additional information is needed, the stewardship organization must submit the additional information to the department within sixty days of receipt of the notice.

(c) The department will post annual reports on the department's web site for public review.

(3) Stewardship organizations must submit one electronic copy of their plan, update, or report to the department. The plan, update, or report must be submitted to the Waste 2 Resources Program at the department's headquarters office.

(4) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

(5) The department may request a hard copy version of the plan or report.

Table 400
Plan and Report Submittal Timeline

Entity	Plan	Plan Update	Annual Report
Timing	*For the following calendar year*		*For the prior calendar year*
Stewardship organization submits document	January 1st	July 1st	June 1st
Department initial review	90 days	90 days	60 days
Stewardship organization document revision	60 days	60 days	60 days
Department second review	60 days	60 days	60 days
Stewardship organization resubmits document	60 days	60 days	60 days
Until approved, document review timing follows the second review schedule			

NEW SECTION

WAC 173-910-450 Plan review and approval. (1) The department will post stewardship plans on the department's web site to allow public review and comment.

(2) Within ninety days after receipt of a complete plan, the department will determine whether the plan complies with this chapter.

(3) The department will determine if the plan is:

(a) **Approved.** If approved, the department will send a letter of approval to the stewardship organization via certified mail. The approval letter will include an expiration date for the plan, either after two years, for initial plans, or four years, for updated plans, from approval.

(b) **Disapproved.** If disapproved, the department will send a letter of disapproval to the stewardship organization via certified mail. The disapproval letter will provide the department's reasons for not approving the plan.

(i) The stewardship organization must submit a new or revised plan within sixty days after receipt of the disapproval letter.

(ii) The department will have an additional sixty days to review the new or revised plan.

(4) The department will consider the following when reviewing a plan for approval:

(a) The plan met the submittal dates;

(b) The plan meets all the requirements in this chapter and provides descriptive information sufficient to allow the department to determine that the implementation of the plan will be in compliance with this chapter;

(c) When reviewing a plan for service level, the department may contact the local governments or communities identified in the plan; and

(d) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-910-320).

(5) The department may request additional information or clarification during the review of a plan. If the department determines that additional information is needed, the stewardship organization must submit the additional information to the department within sixty days of receipt of the notice.

(6) Stewardship organizations may request portions of the plan be exempted from public disclosure in accordance with RCW 42.56.270.

NEW SECTION

WAC 173-910-460 Plan updates. (1) Stewardship organizations operating a product stewardship program must update product stewardship plans by July 1st for the upcoming implementation calendar year and submit the updated plan to the department for review and approval.

(2) Plan updates are required two years after start up, once every four years thereafter, or as needed due to program changes. Examples of program changes that could require an unscheduled plan update include:

(a) Addition or deletion of producers;

(b) Significant changes in collection service;

(c) Revision of the plan goals or schedule; or

(d) Change in processors used by the plan.

(3) Failure to provide service means implementation of the plan fails to do any of the following:

(a) Provide service in each county in the state;

(b) Provide service in each city or town with a population of ten thousand or greater; or

(c) Meet other plan requirements.

(4) Failure to provide service is a stewardship organization implementation violation. The department will document the violation and follow the procedures in WAC 173-910-330 and 173-910-340.

SERVICE PROVIDER REQUIREMENTS

NEW SECTION

WAC 173-910-510 Service provider requirements. (1) Beginning January 1, 2013, service providers participating in a mercury-containing lights product stewardship program approved by the department must comply with the requirements of this chapter.

(2) Service providers participating in the stewardship program that must comply with these requirements include collectors, transporters, and processing facilities.

NEW SECTION

WAC 173-910-520 Collector requirements. (1) Collectors participating in a product stewardship program including, but not limited to, collection sites, curbside services, mail-back services, accumulation points, and collection events, must register with the stewardship organization. Collector registration information must include:

(a) The legal name of the person owning and operating the collection location;

(b) The address of the collection location;

(c) The phone number of the collection location;

(d) The name, address, and phone number of the individual responsible for operating the collection location; and

(e) Updates of any changes in this information within thirty days of the change.

(2) Mercury-containing lights collected for a plan must be collected free of charge except for premium services.

(3) Mercury-containing lights premium services provide collection and transport of mercury-containing lights from point of collection to product stewardship program accumulation points. For premium services participating in the product stewardship program, the stewardship organization must pay the cost of transporting mercury-containing lights from accumulation points to the processing facility and the cost of processing the mercury-containing lights. Premium services include, but are not limited to:

(a) Curbside collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(b) Mail-back collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(4) Collectors participating in a product stewardship program may include collection events that:

(a) Service rural communities that do not have a continually staffed collection site;

(b) Are registered with the stewardship organization; and

(c) Meet the requirements of this section.

(5) Collectors of mercury-containing lights will not process the collected lights unless they also meet the processing facility requirements in WAC 173-910-540.

(6) Collectors must comply with WAC 173-303-573 as small quantity handlers of universal waste as well as all other applicable laws, rules, and local ordinances.

(7) When providing collection services for a plan, each collector, including collection sites, curbside collection, mail-back service, accumulation points, and collection events must:

(a) Staff the site during operating hours;

(b) Notify the stewardship organization of changes in hours and days of operation;

(c) Handle mercury-containing lights in a way that prevents releases of mercury to the environment;

(d) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to

respond to any mercury release from a mercury-containing light;

(e) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety;

(f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage; and

(g) Submit all mercury-containing lights collected from covered entities to a department-approved product stewardship program.

(8) A collector must allow the department access for inspections to determine compliance with the requirements in this chapter.

(9) No entity may claim to be collecting mercury-containing lights for a plan unless the entity is registered with the stewardship organization as a collector and submits all collected mercury-containing lights to the transporters and processors identified in the plan.

(10) Any collector found to be out of compliance with this section or the requirements of the plan will not be allowed to participate in the program.

NEW SECTION

WAC 173-910-530 Transporter requirements. (1) All transporters of mercury-containing lights must comply with all applicable laws, rules, and local ordinances.

(2) Transporters participating in a product stewardship program must register with the stewardship organization as required in WAC 173-910-310 of this chapter.

(3) Transporters must allow access to the department for purposes of ensuring compliance with this chapter.

(4) Transporters must deliver mercury-containing lights for recycling to processing facilities participating in the product stewardship plan.

(5) Any transporter found to be out of compliance with this section or the requirements of the plan will not be allowed to participate in the program.

NEW SECTION

WAC 173-910-540 Processing facility requirements. (1) Processing facilities must operate their facility in a way that protects human health and the environment.

(2) Processing facilities must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing and disposal of mercury-containing lights, parts of the mercury-containing lights, or mercury from the mercury-containing lights. These include, but are not limited to, applicable legal requirements relating to:

(a) Waste and recyclables processing, storage, handling, and shipping;

(b) Air emissions and waste water discharge, including storm water discharges;

(c) Worker health and safety; and

(d) Transboundary movement of materials, waste, or scrap for recycling or disposal.

(3) Processing facilities must be open and transparent concerning compliance with all federal, state, and local requirements. Upon request by the department, person, or individual, a processing facility must make information available about any financial penalties, regulatory orders, or violations received in the previous three years. If the processing facility receives subsequent penalties or regulatory orders, the processing facility must make that information available to the requestor within sixty days after any subsequent penalties or regulatory orders are issued.

(4) Processing facilities participating in a product stewardship program must register with the stewardship organization as required in WAC 173-910-310.

(5) Processing facilities must allow access to the department for purposes of ensuring compliance with this chapter.

(6) Processing facilities may not use federal or state prison labor for processing mercury-containing lights.

(7) Any processing facility found to be out of compliance with this section or the requirements of the plan will not be allowed to participate in the program.

RETAILER, WHOLESALER, DISTRIBUTOR, OR ELECTRIC UTILITY REQUIREMENTS

NEW SECTION

WAC 173-910-610 Participation requirements. (1) Retailers, wholesalers, distributors, electric utilities, or other persons that give away, offer for sale, or sell, including internet sales, mercury-containing lights in or into the state for residential use must comply with the requirements of this section.

(2) Beginning January 1, 2013, mercury-containing lights offered for sale or distributed in or into the state for residential use must be obtained from producers participating in a product stewardship plan approved by the department.

(a) The department will maintain a list of compliant producers on its web site.

(b) Retailers, wholesalers, distributors, or electric utilities are required to regularly check this list of compliant producers to ensure sales and distribution of compliant product.

(3) Retailers, wholesalers, distributors, or electric utilities must only sell or offer for sale or distribute mercury-containing lights from compliant producers. Existing stock of mercury-containing lights in possession on January 1, 2013, may be sold or distributed even if the producer of the mercury-containing light is not in compliance.

(4) After January 1, 2013, the department may inspect mercury-containing lights inventory offered for sale or distributed in or into Washington state to determine if the requirements in this chapter are met.

(5) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale or distribute mercury-containing lights must work with stewardship organizations to:

(a) Ensure distribution of mercury-containing lights in or into Washington state is from producers participating in the product stewardship program; and

(b) Provide information to consumers and customers describing where and how to return mercury-containing

lights to the product stewardship program and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(i) Use of artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(ii) The stewardship organization's toll-free telephone number and web site.

(iii) Information about how to return mercury-containing lights to the product stewardship program in Washington state either in, on, or with the packaging.

(c) Provide information in a visible location on their web site.

NEW SECTION

WAC 173-910-620 Violation and warning. (1) A retailer, wholesaler, distributor, or electric utility is in violation of this chapter when selling or distributing mercury-containing lights from a noncompliant producer.

(2) A violation occurs for every day of noncompliance with the requirements.

(3) Department issued warning letters will:

(a) Be issued for violations.

(b) Be sent by certified mail.

(c) Include a copy of the requirements to let the recipient know what they must do to be in compliance with this chapter.

(d) Include the time period within which the recipient must be in compliance in order to avoid a penalty.

NEW SECTION

WAC 173-910-630 Penalty and appeal. (1) Penalties apply when a retailer, wholesaler, distributor, or electric utility fails to come into compliance with this chapter.

(2) Failure to comply with the warning letter within sixty days will result in a penalty of up to five hundred dollars for each violation; a violation is one day of noncompliance.

This penalty will be waived if the distribution or sale of mercury-containing lights is discontinued within thirty days of the date the penalty was assessed.

(3) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(4) To correct a violation the recipient must:

(a) Meet the requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(5) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

WSR 12-23-054
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 07-17—Filed November 16, 2012, 3:40 p.m., effective January 2, 2013]

Effective Date of Rule: January 2, 2013.

Purpose: The adoption of this water management rule is needed to protect instream values within the Dungeness watershed, avoid injury to existing water rights from future appropriations of water, and implement recommendations of the Elwha-Dungeness watershed plan. This rule sets instream flows, closes or seasonally closes rivers and streams to new withdrawals, requires mitigation for new consumptive uses of water, establishes reserves of water for future domestic use, sets maximum allocations of water from the mainstem Dungeness River during the open period, allows storage projects, and requires metering for new withdrawals. This rule helps the Washington state department of ecology meet statutory obligations to manage waters for public use and for the protection of instream flows.

Statutory Authority for Adoption: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW.

Adopted under notice filed as WSR 12-11-020 on May 7, 2012, and continued as WSR 12-16-041 on July 27, 2012.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes from the proposed rule published with the CR-102 and the rule adopted and published with the CR-103. The changes were made in response to comments, as well as upon ecology's initiative. The changes made do not change the general subject matter or the intent of the rule as proposed.

WAC 173-518-010 General provisions, in subsection (3) changed bullets to letters in response to a comment requesting the change.

WAC 173-518-030 Definitions, amended the definition of "domestic use" to provide clarification of what is considered an incidental household use. This change is consistent with original rule intent.

Amended the definition of "interruption" to clarify potential application to all water rights, including those established under the groundwater permit exemption. This change was made in response to a comment and is consistent with original rule intent.

Clarified the definition of "public water system." This change was made in response to a comment and is consistent with original rule intent.

Clarified the definition of "water budget neutral" regarding consumptive use impacts to surface water. This change is consistent with original rule intent.

WAC 173-518-040 Establishment of instream flows, in subsection (5) changed "new water use" to "new water appropriation." This change was made in response to a comment and is consistent with original rule intent.

WAC 173-518-050 Closures, added year-round closure of unnamed tributaries to the Dungeness River, based on a recommendation in the watershed plan. This change was made to incorporate the plan recommendation and is consistent with original rule intent.

WAC 173-518-060 Metering and reporting water use, amended wording in subsection (1) to clarify intent. This change is consistent with original rule intent.

WAC 173-518-075 Mitigation plans, amended wording in subsection (2) to clarify all of listed items apply. This change was made in response to a comment and is consistent with original rule intent.

WAC 173-518-076 Expedited processing, deleted the word "expedite" and replaced with "give priority to" in response to comments requesting clarification. This change is consistent with original rule intent.

WAC 173-518-110 Compliance and enforcement, added the implementation plan to the list of information that will be made available to the public. This change was made at ecology's initiative and is consistent with the original rule intent.

WAC 173-518-140 Map, amended the heading on the map to clarify that the map only shows the Dungeness watershed and not all of WRIA 18. This change was made in response to a comment and is consistent with original rule intent.

A final cost-benefit analysis is available by contacting Department of Ecology, Water Resources Program Publications, P.O. Box 47600, Olympia, WA 90504-7600 [98504-7600], phone (360) 407-6624, fax (360) 407-6574, e-mail Briana.Phillips@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 8, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 18, Amended 0, Repealed 0.

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

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

Date Adopted: November 16, 2012.

Ted Sturdevant
Director

Chapter 173-518 WAC

WATER RESOURCES MANAGEMENT PROGRAM FOR THE DUNGENESS PORTION OF THE ELWHA-DUNGENESS WATER RESOURCE INVENTORY AREA (WRIA) 18

NEW SECTION

WAC 173-518-010 General provisions. (1) This chapter applies to all surface and groundwaters within the Dungeness River watershed of water resource inventory area (WRIA) 18, as defined in WAC 173-500-040, excluding the Elwha-Morse watershed basin. The rule covers the area from the Morse-Bagley watershed divide in the western portion of the basin, to the Bell-Johnson watershed divide on the eastern portion of the basin (the WRIA boundary). Please see WAC 173-518-140, Maps.

(2) The department of ecology (ecology) adopts this chapter under the authority of the Watershed planning (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), and Water resource management (chapter 90.42 RCW); and in accordance with the Administrative Procedure Act (chapter 34.05 RCW).

(3) This chapter applies to the use and appropriation of surface and groundwater in the Dungeness River watershed begun after the effective date of this chapter. Unless otherwise provided for in the conditions of the water right in question, this chapter shall not affect:

(a) Existing surface and groundwater rights established prior to adoption of the state surface water and groundwater codes, or by water right permit issued under state law;

(b) Existing groundwater rights established under the groundwater permit-exemption where regular beneficial use began before the effective date of this chapter;

(c) The ability to serve water to a parcel that is part of a group domestic use under the groundwater permit exemption, provided the new use begins within five years of the date water was first regularly and beneficially used by one or more parcels in the group, and the group use remains within the limit of the groundwater permit exemption; and

(d) Federal and tribal reserved rights.

(4) In adopting this chapter, ecology generally enacts recommendations from the 2005 Elwha-Dungeness watershed management plan. The plan recommendations were approved on April 15, 2004, by the Dungeness River and Elwha-Morse management teams, groups composed of a broad range of local water interests. The Clallam County board of commissioners approved the plan on June 7, 2005. Ecology has used plan recommendations as the foundation for developing this rule.

NEW SECTION

WAC 173-518-020 Purpose. The purpose of this chapter is to manage water to better satisfy both present and future human needs; to retain natural surface water bodies in the Dungeness River watershed planning area with stream flows at levels necessary to protect instream values and resources; and to implement ecology's obligations under the Elwha Dungeness watershed plan. Instream resources include: Wildlife, fish, scenic, aesthetic, recreation, water quality, and other environmental values; navigational values; and stock water needs.

NEW SECTION

WAC 173-518-030 Definitions. The definitions provided in this section apply only to this chapter.

"Allocation" means the designation of specific amounts of water for beneficial uses.

"Appropriation" means the process of legally acquiring the right to use specific amounts of water for beneficial uses, consistent with the ground and surface water codes and other applicable water resource statutes.

"Beneficial use" means uses of water as defined in chapters 90.03 and 90.54 RCW and WAC 173-500-050.

"Closure" means that water is no longer available for future appropriations without mitigation to offset the use. This is due to a finding by ecology that further appropriations

from the closed stream(s) or hydraulically connected groundwaters would impair senior water rights or cause detriment to the public interest.

"Consumptive use" means use of water that diminishes the volume or quality of the water source.

"Control station" means a specific location where stream flows and water levels are measured.

"Critical period" means for a given stream the thirty-day period with the lowest stream flow available to support a critical life stage for fish, as determined by Washington state department of fish and wildlife, ecology, and tribes, typically during the late summer or fall.

"Cubic foot per second" or **"cfs"** means the rate of flow representing a volume of one cubic foot passing a given point during one second.

"Domestic use" means use of water associated with human health and welfare needs, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses. The incidental uses must minimize the consumptive use of water. Examples of incidental household uses include, but are not limited to: Washing windows, car washing, cleaning exterior structures, care of household pets, and watering potted plants. Domestic use does not include other uses allowed under the groundwater permit exemption: Outdoor irrigation of up to one-half acre of noncommercial lawn or garden, stockwatering, and industrial use.

"Dungeness water exchange" means a water bank pursuant to the Water Resources Management Act, chapter 90.42 RCW.

"Ecology" means the Washington state department of ecology.

"Existing water right" includes perfected riparian rights, federal Indian and non-Indian reserved rights, or other perfected and inchoate appropriative rights, including water rights established under RCW 90.03.260 through 90.03.290 and 90.44.050.

"Hydraulically connected" means saturated conditions exist that allow water to move between two or more sources of water, either between surface water and groundwater or between groundwater sources.

"Instream flows" means a stream flow level set in rule to protect and preserve fish, wildlife, scenic, aesthetic, recreational, water quality, and other environmental values; and navigational values. The term "instream flow" means "base flow" under chapter 90.54 RCW, "minimum flow" under chapters 90.03 and 90.22 RCW, and "minimum instream flow" under chapter 90.82 RCW.

"Interruption" means a temporary halt or reduction in the rate and volume of withdrawal under water rights established after the effective date of this rule during periods when the flow in the river or stream falls below the instream flow levels set in WAC 173-518-040.

"Maximum depletion amount" means a limit on how much impact to water resources resulting from groundwater withdrawals will be allowable under this rule before ecology declares water is not available.

"Mitigation" means action taken to offset impacts from future water appropriations on closed surface water bodies or senior water rights, including the instream flow levels set in WAC 173-518-040, as provided in WAC 173-518-070.

"Nonconsumptive use" means a type of water use where either there is no diversion from a water source, or where there is no diminishment of the amount or quality of the water source.

"Permit-exempt withdrawals" or **"permit exemption"** means a groundwater withdrawal exempted from ecology water right permitting requirements under RCW 90.44.050, but which is otherwise subject to the groundwater code and other applicable regulations.

"Proponent" means the person or entity that seeks a new appropriation of surface or groundwater, including through a permit exempt withdrawal.

"Public water system" means any system that provides water for human consumption or municipal purposes through pipes or other constructed conveyances. This includes both systems that meet the definition of municipal water supplier in RCW 90.03.015(3) and Group B systems as classified by the Washington department of health, and excludes a system serving one single-family residence or a system with four or fewer connections serving residences on the same farm.

"Reserve" means a limited allocation of water for future new uses not subject to interruption when stream flows fall below the levels adopted in this rule.

"Stream flow" means the amount of water flowing down a stream.

"Subbasin management unit" means a stream segment, reach, or tributary basin where a particular instream flow level, reserve, water diversion, or withdrawal limit applies.

"Timely and reasonable" means the timing and cost involved in providing potable water service by a public water system to a property consistent with Washington department of health guidance and local coordinated water system plan definitions.

"Water budget neutral" means either placement of other water rights into the trust water right program or stream flow improvement with appropriate assurances, that are at least equivalent to the amount of impact to surface water resulting from consumptive use of a proposed project.

"Water resource inventory area (WRIA)" means one of the sixty-two areas designated by the state of Washington through chapter 173-500 WAC to delineate area boundaries within the state for water management purposes.

"Water right change or transfer" means a change in the place of use, point of diversion or withdrawal, number of points of diversion or withdrawal, or purpose of use (including season of use), of an existing water right. A water right change application must be filed with ecology for approval. If approved, the modified water right will carry the priority date of the original water right.

"Water right permit" means a permit that represents approval by ecology to appropriate water for a beneficial use.

"Withdrawal" means the extraction and beneficial use of groundwater, or the diversion and beneficial use of surface water.

NEW SECTION

WAC 173-518-040 Establishment of instream flows. (1) The instream flows established in this section are based on recommendations in the 2005 Elwha-Dungeness watershed plan, consultation with the Jamestown S'Klallam Tribe, the departments of fish and wildlife, agriculture, and commerce; and public input received during the rule-making process.

(2) Instream flows established in this rule are necessary to meet the water resource management objectives of the Elwha-Dungeness watershed plan.

(3) Instream flows established in this rule are water rights and will be protected from impairment by any new water rights commenced after the effective date of this chapter and by future water right changes and transfers.

(4) Instream flows are expressed in cubic feet per second (cfs), and are measured at the control stations identified in Table I. Tables II A and B identify instream flows set by this rule.

(5) Exceptions to the instream flow requirements are provided in WAC 173-518-070, 173-518-080, and 173-518-085. Any other new water appropriation established after the effective date of this rule will be subject to interruption when stream flows drop below the instream flow levels set in Table II.

Table I
Subbasin Management Unit Information

Subbasin Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)	Stream Management Reach
Bagley Creek @ Hwy. 101	RM 1.4; 48°05'56"N, 123°19'47"W	From mouth to headwaters, including tributaries.
Bell Creek @ Schmuck Rd.	RM 0.2; 48°05'01"N, 123°03'25"W	From mouth to headwaters, including tributaries.
Cassalery Creek @ Woodcock Rd.	RM 1.8; 48°06'59"N, 123°06'31"W	From mouth to headwaters, including tributaries.
Dungeness River @ Schoolhouse Bridge	Ecology Gage 18A050 RM 0.8; 48°08'37"N, 123°07'43"W	From mouth to headwaters, including tributaries, except Meadowbrook and Matriotti creeks.
Gierin Creek @ Holland Rd.	RM 1.7; 48°06'05"N, 123°04'40"W	From mouth to headwaters, including tributaries.
Matriotti Creek @ Lamar Ln.	RM 1.3; 48°07'54"N, 123°09'46"W	From mouth to headwaters, including tributaries.
McDonald Creek @ Old Olympic Hwy.	RM 1.6; 48°06'20"N, 123°13'17"W	From mouth to headwaters, including tributaries.
Meadowbrook Creek @ Sequim-Dungeness Way	RM 1.2; 48°08'41"N, 123°07'27"W	From mouth to headwaters, including tributaries.
Siebert Creek @ Old Olympic Hwy.	Ecology Gage 18L060 RM 1.3; 48°06'24"N, 123°16'42"W	From mouth to headwaters, including tributaries.

Table II A
Instream Flows in the Dungeness River Basin
(cubic feet per second)

Month	Bagley Creek	Bell Creek	Cassalery Creek	Dungeness Mainstem	Gierin Creek
January	15	11	5	575	10
February	10	7	3	575	7
March	29	22	12	575	20
April	29	22	12	475	20
May	20	14	8	475	13
June	20	14	8	475	13
July	6	4	2	475	4
August	6	4	2	180	4
September	6	4	2	180	4
October	6	4	2	180	4
November	15	11	5	575	10
December	15	11	5	575	10

Table II B
Instream Flows in the Dungeness River Basin
(cubic feet per second)

Month	Matriotti Creek	McDonald Creek	Meadowbrook Creek	Siebert Creek
January	14	36	12	36
February	10	24	8	24
March	27	63	24	63
April	27	63	24	63
May	18	42	16	42
June	18	42	16	42
July	5	15	5	15
August	5	15	5	15
September	5	15	5	15
October	5	15	5	15
November	14	36	12	36
December	14	36	12	36

NEW SECTION

WAC 173-518-050 Closures. Surface water: Ecology determines that, based on recommendations in the watershed plan, historical and current low stream flows, and the need to protect existing water rights, water is not reliably available for new consumptive uses from the streams and tributaries in the Dungeness River watershed listed in Table III, with the exception of certain times of year in the Dungeness mainstem. Therefore, Bagley, Bell, Cassalery, Gierin, Matriotti, McDonald, Meadowbrook, and Siebert creeks, and unnamed tributaries to the Dungeness River, are closed year round. The Dungeness River mainstem is closed from July 15 until November 15 each year. Table III shows the closure periods and affected reaches. Exceptions to the surface water closures are provided in WAC 173-518-070, 173-518-080, and 173-518-085.

Table III
Surface Water Closures

Stream Management Unit Name	Affected Reach	Timing
Bagley Creek	From mouth to headwaters, including tributaries.	All year
Bell Creek	From mouth to headwaters, including tributaries.	All year
Cassalery Creek	From mouth to headwaters, including tributaries.	All year
Dungeness Mainstem	From mouth to headwaters, including tributaries, except Meadowbrook and Matriotti creeks.	From July 15 - November 15
Gierin Creek	From mouth to headwaters, including tributaries.	All year
Matriotti Creek	From mouth to headwaters, including tributaries.	All year
McDonald Creek	From mouth to headwaters, including tributaries.	All year
Meadowbrook Creek	From mouth to headwaters, including tributaries.	All year
Siebert Creek	From mouth to headwaters, including tributaries.	All year
Unnamed tributaries to the Dungeness River	From mouth to headwaters.	All year

NEW SECTION

WAC 173-518-060 Metering and reporting water use. All future new surface and groundwater appropriations, other than rainwater collection, shall measure withdrawals.

(1) Water meters must meet specifications available through ecology.

(2) Water meters must be read and reported in accordance with chapter 173-173 WAC or as directed by ecology.

NEW SECTION

WAC 173-518-070 Future groundwater appropriations. All new groundwater appropriations must comply with the provisions of this chapter.

(1) Based on the hydrogeology of the basin, ecology determines that surface water and groundwater sources within the Dungeness watershed are hydraulically connected.

(2) If connection to a public water supply is not available in a timely and reasonable manner, then a new withdrawal from another well is allowed. Written evidence that connection is not available must be provided to ecology or the county before another well may be used for a new withdrawal.

A new permit-exempt withdrawal may receive water from an existing group domestic water system operating under the groundwater permit exemption. The new withdrawal will be considered an additional and separate exemption.

(3) New groundwater rights, including permit-exempt withdrawals under RCW 90.44.050, may be obtained that are not subject to the instream flows established in WAC 173-518-040 or to the closures established in WAC 173-518-050 if all statutory requirements are met and any of the following situations apply:

(a) A proposed use that would impact any surface water sources listed in Table III is mitigated through an ecology-approved mitigation plan, as defined in WAC 173-518-075.

(i) Water use may be mitigated through the purchase of credits available through the Dungeness water exchange. The exchange will identify methods and means of mitigation, including the use of water resources management techniques and water banking authorized under RCW 90.03.255 and chapter 90.42 RCW. The 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009) will be the basis for determining credits for offsetting the consumptive use associated with the proposed water use. At the time of rule adoption the 2008 Dungeness Groundwater Flow Model represents the best available method for calculating mitigation credits. If ecology determines a better method is available in the future, then ecology will apply the new method. Drilling to the middle or deep aquifer, where available, is encouraged.

(ii) As an alternative to acquiring mitigation through the Dungeness water exchange, the proponent may choose to submit a mitigation plan. Ecology must approve the mitigation plan prior to plan implementation. If ecology determines that the mitigation is no longer effective, the water use shall cease until an effective mitigation plan is put in place.

(b) The proposed use is nonconsumptive, and is compatible with the intent of this chapter.

(c) The proponent shows, through scientifically sound studies and technical analysis, and to the satisfaction of ecology, that the proposed use will not adversely affect any surface waters closed in WAC 173-518-050.

(4) All new wells drilled must comply with state well drilling requirements in chapter 173-160 WAC, in particular the provisions to prevent contamination between aquifers in WAC 173-160-241.

(5) New permits for groundwater withdrawals may include a provision requiring that the permittee allow ecology employees access to the well and any associated measuring device upon request at reasonable times.

NEW SECTION

WAC 173-518-075 Mitigation plans. The Dungeness water exchange and new water users choosing to mitigate must submit a mitigation plan to ecology to demonstrate how they will offset the impacts of their proposed consumptive use (see WAC 173-518-070 (3)(a)). The mitigation plan must receive ecology approval and be implemented before the proposed water use begins.

(1) The mitigation plan must:

(a) Ensure mitigation measures remain effective as long as the water use occurs.

(b) Include affirmative measures to prevent water provided for mitigation under the plan from being appropriated for any other purpose or by another person or entity.

(c) Include a monitoring and reporting plan, with a quality assurance/quality control plan.

(2) The mitigation plan must show that the proposed withdrawal, with mitigation in place, will not have any of the following impacts:

(a) Impair existing water rights;

(b) Be detrimental to the public interest, including consideration of projected domestic use in the area, the projected stream depletions within affected subbasins, the likelihood that mitigation to offset such projected stream depletions can be obtained or achieved, water budget neutrality with respect to the Dungeness River watershed, and maximizing instream benefits during the critical period;

(c) Result in a net loss of water from a closed source greater than the applicable maximum depletion amounts.

(3) The plan must include financial assurance for implementing the plan. Ecology may, for any reason, refuse any performance security ecology does not deem adequate. Financial assurances may include:

(a) A bank letter of credit;

(b) A cash deposit;

(c) A negotiable security;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank;

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW; or

(g) Other financial assurance deemed adequate by ecology.

NEW SECTION

WAC 173-518-076 Expedited processing. Ecology may give priority to the processing of an application for a change or transfer of an existing water right, a water budget neutral determination, or issuance of a water right permit if the application or request is expected to:

(1) Fully offset impacts to surface water;

(2) Benefit stream flows; or

(3) Otherwise substantially enhance or protect the quality of the natural environment.

NEW SECTION

WAC 173-518-080 Reserves of water for domestic use. (1) Ecology has weighed the public interest supported by providing a limited amount of water for domestic water supply against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by these limited reserves clearly overrides the potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a).)

Based on this finding, ecology hereby reserves specific quantities of groundwater for future domestic supply only. These reserves of water are not subject to the instream flows established in WAC 173-518-040 or closures established in WAC 173-518-050.

Consumptive water use that would impact surface water sources listed in Table III must be mitigated in accordance with this chapter. Reserves shall be debited when mitigation

water is not available. Table IV shows the reserve quantities for each subbasin management unit.

Table IV
Reserved Quantities

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Bagley Creek	0.01	6,463
Bell Creek	0.0023	1,486
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

(2) Conditions for use of the groundwater reserves are as follows:

(a) Access to the reserves shall be only for the purpose of domestic water use as defined under WAC 173-518-030.

(b) Water use shall meet all applicable local or state conservation standards and be consistent with the watershed plan.

(3) If a use from a reserve does not comply with all conditions of the reserves, ecology may take action under WAC 173-518-110.

(4) Ecology shall maintain a record of all appropriations from the reserves and will make this information available on ecology's web page.

(5) Ecology will account for water use from the reserves by debiting the calculated impacts to each closed surface water. The impacts to surface water are calculated as a percentage of the consumptive portion of estimated or measured water use. The debits to the reserves will be determined after consideration of any implemented mitigation.

(a) For a new domestic use served by an individual or community on-site septic system, ecology will use a standard consumptive amount of fifteen gallons per day.

(b) For a new domestic use served by a sanitary sewer, ecology will use a standard consumptive amount of one hundred fifty gallons per day.

(c) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009), unless, in the future, ecology determines a better method is available.

(d) Ecology may periodically adjust the amounts deducted from the reserves based on the best information available on actual water use.

NEW SECTION

WAC 173-518-085 Maximum depletion amounts. (1) All unmitigated impacts from the consumptive use of water from the reserves and impacts from implementation of ecology approved mitigation plans shall be debited against the maximum depletion amount for each affected subbasin.

(2) The maximum depletion amounts shall not be exceeded.

(3) No new use that would result in impacts to closed surface waters exceeding the maximum depletion amounts during the critical period shall be allowed. If the cumulative impact calculated for a subbasin exceeds the maximum depletion amount, additional mitigation must be achieved before new uses impacting that subbasin can be authorized.

(4) Ecology shall maintain a record of all appropriations that result in deductions against the maximum depletion amounts. Ecology will account for water use from the maximum depletion amounts by debiting the calculated impact to each closed surface water. The impacts to surface water are calculated as a percentage of the consumptive portion of estimated or measured water use. The deductions from the maximum depletion amounts will be determined after consideration of any implemented mitigation.

(a) For parcels served by an individual or community septic system, ten percent of indoor water use is assumed consumptive.

(b) For parcels served by a sanitary sewer system, one hundred percent of indoor water use is assumed consumptive.

(c) Ninety percent of outdoor water use is assumed to be consumptive.

(d) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009), unless, in the future, ecology determines a better method is available.

(e) The amounts deducted against the maximum depletion amounts may be adjusted periodically by ecology, to reflect actual use based on the best information available.

(5) Maximum depletion amounts are associated with, and not in addition to, the reserve amounts listed in WAC 173-518-070. Table V shows the maximum depletion amounts for each subbasin management unit.

Table V
Maximum Depletion Amounts Due to New Groundwater Appropriation

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Bagley Creek	0.01	6,463
Bell Creek	0.0023	1,486
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

NEW SECTION

WAC 173-518-090 Future maximum allocation from the Dungeness River mainstem. (1)(a) Ecology determines that there are certain times of the year when there are stream flows in the Dungeness River mainstem above the instream flows, which provide critical ecological functions such as channel and riparian zone maintenance, sediment flushing, and fish migration. To protect the frequency and duration of these higher flows, this chapter limits the total amount of water available for withdrawal from the Dungeness River mainstem by setting maximum allocations from November 16 - July 14.

(b) Maximum allocations are established in Table VI for use in reviewing applications for interruptible water rights during times when stream flows exceed the instream flows for the Dungeness River mainstem from November 16 - July 14. Cumulative allocations must not exceed the numbers listed in Table VI, and must not impair instream flows.

Table VI
Maximum Allocations on the Dungeness River Mainstem (cubic feet per second)

January	25
February	25
March	25
April	25
May	35
June	35
July 1 - 14	35
July 15 - 31	0
August	0
September	0
October	0
November 1 - 15	0
November 16 - 30	25
December	25

(2) Ecology may issue a permit under RCW 90.03.290, 90.44.050, or 90.03.370 within the maximum allocation limit after consultation with the Washington department of fish and wildlife and the Jamestown S'Klallam Tribe.

The water rights from the maximum allocation are subject to the instream flows set in WAC 173-518-040, and other provisions in statute, administrative rules, and case law.

(3) Ecology will track the amount of water appropriated from the Dungeness River from the maximum allocation. When the maximum allocation is fifty percent, seventy-five percent, and fully appropriated, ecology shall notify Clallam County in writing. Once fully and permanently appropriated, no more maximum allocation water may be appropriated.

NEW SECTION

WAC 173-518-095 Storage projects. (1) Notwithstanding other provisions of this chapter, ecology, after consultation with Tribes, Clallam County, Washington department of fish and wildlife, and NOAA fisheries may, on a case-by-case basis, authorize storage projects for environmental enhancement and other beneficial uses consistent with the Elwha-Dungeness watershed plan. Such decisions shall consider the following:

- The management objectives of the storage project;
- The effect of the project on salmonids;
- The effect of the project on ecological functions provided by high stream flows;
- The cumulative effects of all such projects weighed against the public benefit the stored water would provide.

(2) The application for the storage project must include a monitoring and adaptive management component and show the ability to implement such a program. All other applicable permits must be obtained.

NEW SECTION

WAC 173-518-100 Lakes and ponds. RCW 90.54.020 (3)(a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced; and lakes, ponds, and other small bodies of water shall be retained substantially in their natural condition. Future withdrawals must be consistent with this requirement.

NEW SECTION

WAC 173-518-110 Compliance and enforcement. (1) In accordance with RCW 90.03.605, in order to obtain compliance with this chapter, ecology shall prepare and make available to the public technical and educational information, including the implementation plan, regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When ecology determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in egregious cases involving potential harm to other water rights or to the environment. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess civil penalties under RCW 90.03.600.

(3) Nothing in this section prevents ecology from taking immediate action to stop a violation if in the opinion of ecology the nature of the violation is causing harm to other water rights or to public or tribal resources.

NEW SECTION

WAC 173-518-120 Regulation review. (1) Ecology, after consultation with local, tribal, and state governments, may initiate a review, and if necessary amend this rule under chapter 34.05 RCW, if significant new information becomes available.

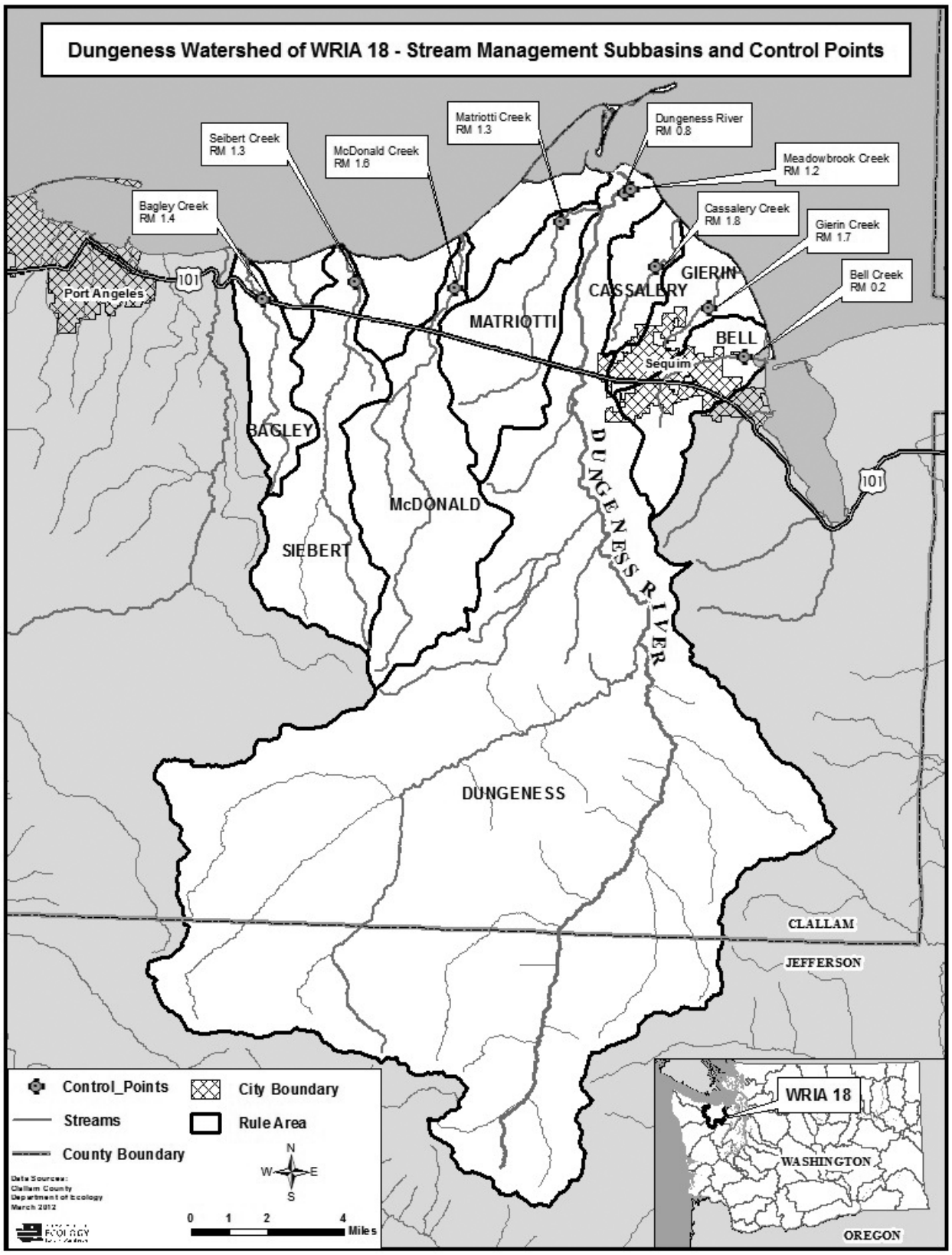
(2) If flow in the Dungeness River, calculated at river mile 4.2, attains an average daily flow of 105 cfs during the thirty-day critical period for eight out of ten consecutive years, then ecology will assess whether new instream flow or other technical studies are warranted for the Dungeness River.

NEW SECTION

WAC 173-518-130 Appeals. All final written decisions of ecology pertaining to water right permits, regulatory orders, and related water right decisions made pursuant to this chapter are subject to appeal to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-518-140 Map.



WSR 12-23-057
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed November 19, 2012, 9:34 a.m., effective December 20, 2012]

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

Purpose: Adopting new chapter 170-297 WAC, School-age child care standards, and repealing all sections of chapter 170-151 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 170-151-010, 170-151-020, 170-151-040, 170-151-045, 170-151-070, 170-151-075, 170-151-080, 170-151-085, 170-151-087, 170-151-090, 170-151-092, 170-151-093, 170-151-094, 170-151-095, 170-151-096, 170-151-097, 170-151-098, 170-151-100, 170-151-110, 170-151-120, 170-151-130, 170-151-150, 170-151-160, 170-151-165, 170-151-170, 170-151-180, 170-151-190, 170-151-200, 170-151-210, 170-151-220, 170-151-230, 170-151-240, 170-151-250, 170-151-260, 170-151-280, 170-151-290, 170-151-310, 170-151-320, 170-151-330, 170-151-340, 170-151-380, 170-151-390, 170-151-410, 170-151-420, 170-151-430, 170-151-440, 170-151-450, 170-151-460, 170-151-461, 170-151-462, 170-151-470, 170-151-480, 170-151-490, 170-151-500, 170-151-991, 170-151-992, and 170-151-993.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Adopted under notice filed as WSR 12-18-079 on September 5, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 170-297-1040 was removed.

WAC 170-297-1710 (3)(i), changed to read "Have a minimum of forty-five college credits (or thirty college credits and one hundred fifty training hours) in approved school-age credits as specified in the Washington state guidelines for determining related degree and approved credits."

Subsection (4) was changed to read "A program director must be on the premises as needed."

WAC 170-297-1710(5), changed to read "When the program director is not on-site the program director must leave a competent, designated staff person in charge. This staff person must meet the qualifications of a site coordinator and may also serve as child care staff when that role does not interfere with management and supervisory responsibilities."

WAC 170-297-1715 (2)(e), changed to read "Have completed thirty college credits in approved school-age credits as specified in the Washington state guidelines for determining related degree and approved credits, or twenty college credits and one hundred clock hours of related community training."

WAC 170-297-1720 (3)(j), added "if applicable."

Subsection (5) changed to read "When the site coordinator is off-site or unavailable, lead teachers may assume the duties of site coordinator when they meet the site coordinator minimum qualifications, and may also serve as child care staff when the role does not interfere with management and supervisor responsibilities."

WAC 170-297-1730 (5)(f), added "if applicable."

WAC 170-297-1735, moved subsection (4)(d) Food worker card, if applicable to subsection (2)(e).

WAC 170-297-1820, changed to read "The program staff must be provided with the following training:

(1) Child/adolescent growth and development;
(2) Learning environment and curriculum;
(3) Child observation and assessment;
(4) Families, communities, and schools;
(5) Safety and wellness;
(6) Interactions with children/youth;
(7) Program planning and development;
(8) Professional development and leadership;
(9) Cultural competency and responsiveness;
(10) Youth empowerment; and
(11) Other training as appropriate."

WAC 170-297-2200(5), removed "asthma attack."

WAC 170-297-2875 (1)(c), changed to read "How to test the smoke detectors and carbon monoxide detectors and replace detector batteries, if required;"

WAC 170-297-3250 (1)(d), changed to read "Provide access to immunization records of each child enrolled to agents of the state or local health department."

Subsection (2) deleted.

WAC 170-297-3300, changed to read "The child care program may accept a child without any immunizations if the parent or guardian provides a DOH certificate of exemption form indicating a medical, religious, philosophical or personal exemption as provided in WAC 246-105-060."

WAC 170-297-3700, added subsection (2) "Where the licensee does not have decision making authority over the licensed premises, document verification of compliance is acceptable."

WAC 170-297-3925(1), added "Where the licensee does not have decision making authority over the licensed premises, document verification of compliance is acceptable."

Cleaning, sanitizing and disinfecting table:

Removed subsections (c)(iii) and (iv).

Subsection (d) deleted, "may use disposable, one time utensils."

Subsection (e) changed to read "Toys that are not contaminated with bodily fluids. Dress-up clothes (not worn on the head or come into contact with the head while dressing)."

Subsection (f) deleted.

Subsection (g) changed to read "Hats and helmets after each child's use or use disposable hats that only one child wears.["]

Subsection (h) changed to read "Wash cloths or single use towels, Sanitize (see subsection (3) of this section) after each child's use.["]

WAC 170-297-3950, added "(3) Where the licensee does not have decision making authority over the licensed premises, document verification of compliance is acceptable."

WAC 170-297-4025 (1)(c), added the statement "During operating hours,".

WAC 170-297-4100(2), changed to read "The following chemicals and other substances that belong to the program or program staff must be stored inaccessible to children:".

WAC 170-297-4275, changed to read "A fan, air conditioner or cross ventilation must be used in licensed space when the inside temperature exceeds eighty-two degrees Fahrenheit. Fans and air conditioners must be kept inaccessible to the children, or a protective barrier must be used to prevent children from accessing fan blades."

WAC 170-297-4550(1), deleted "Windows in the licensed space that are within the reach of the children must have a screen or guard to prevent a child's exit or limited opening of less than three and one-half inches.["]

WAC 170-297-5050, changed the word "equipment" to "structures."

WAC 170-297-5600, added "(3) At minimum, a 1:15 staff-to-child ratio must be maintained at all times."

WAC 170-297-5700, deleted entire paragraph.

WAC 170-297-6675(1), added the statement "except when children are completing homework assignments."

WAC 170-297-7625(1), changed to read "Breakfast must be made available either by the program or the school."

WAC 170-297-8060(5), added the statement "at one time."

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 190, Amended 0, Repealed 57.

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 190, Amended 0, Repealed 57.

Date Adopted: November 19, 2012.

Elizabeth M. Hyde
Director

Chapter 170-297 WAC

LICENSED SCHOOL AGE CHILD CARE STANDARDS

NEW SECTION

WAC 170-297-0001 Authority. The department of early learning was established under chapter 265, Laws of 2006. Chapter 43.215 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.215 RCW.

NEW SECTION

WAC 170-297-0005 Intent. This chapter reflects the department's commitment to quality early learning experiences for children, and promotes the health, safety, and positive development of children receiving care in a licensed school age setting serving only children five years of age through twelve years of age who are attending kindergarten or school.

NEW SECTION

WAC 170-297-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

"Accessible to children" means areas of the facility and materials that the children can easily get to on their own.

"Agency" as used in this chapter, has the same meaning as in RCW 43.215.010 (1)(c).

"Available" means accessible and ready for use or service.

"Bathroom" means any room containing a built-in flush-type toilet.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Child" means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"Child abuse or neglect" has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

"Child care" means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

"Clean" or **"cleaning"** means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

"Confidential" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Denial of a license" means department action to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

"Department" or **"DEL"** means the Washington state department of early learning.

"Developmentally appropriate" means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" or **"disinfecting"** means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if

applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

"DOH" means the Washington state department of health.

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

"Enforcement action" means a department issued:

(a) Denial, suspension, revocation or modification of a license;

(b) Probationary license;

(c) Civil monetary penalty (fine); or

(d) Disqualification from having unsupervised access to children in care.

"Fine" has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

"Inaccessible to children" means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" for the purposes of this chapter, means the individual listed on a school age child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

"Licensor" means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

"MERIT" means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

"Modification of a license" means department action to change the conditions identified on a current license.

"Nonexpiring full license" or **"nonexpiring license"** means a full license with no expiration date that is issued to a licensee following the initial licensing period as provided in WAC 170-297-1430.

"Nonprescription medication" means any of the following:

(a) Nonaspirin fever reducers or pain relievers;

(b) Nonnarcotic cough suppressants;

(c) Cold or flu medications;

(d) Antihistamines or decongestants;

(e) Vitamins;

(f) Ointments or lotions specially intended to relieve itching;

(g) Diaper ointments and talc free powders specially used in the diaper area of children;

(h) Sun screen;

(i) Hand sanitizer gels; or

(j) Hand wipes with alcohol.

"Personal needs" means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. Personal needs does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Physical restraint" means the practice of rendering a child helpless or keeping a child in captivity.

"Poison" for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if they are swallowed or come into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

"RCW" means Revised Code of Washington.

"Revocation" or **"revoke"** means the formal department action to close a child care business and take the license due to the licensee's failure to comply with chapter 43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control of a minimum 140 degrees Fahrenheit.

"Screen time" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"Staff" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

"STARS" means the state training and registry system.

"Suspension of a license" means a formal department action to immediately stop a license pending a department decision regarding further enforcement action.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved as licensed space by DEL that the licensee must make inaccessible to the children during child care hours.

"Unsupervised access" has the same meaning as unsupervised access in WAC 170-06-0020.

"WAC" means the Washington Administrative Code.

"Weapons" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

NEW SECTION

WAC 170-297-0050 Special needs accommodations. The provisions of this section apply to any requirement in this chapter.

(1) The department may approve accommodations to requirements in these standards for the special needs of an individual child when:

(a) The licensee or designee submits to the department a written plan, signed by the parent or guardian, that describes how the child's needs will be met in the licensed child care; and

(b) The licensee or designee has supporting documentation of the child's special needs provided by a licensed or certified:

(i) Physician or physician's assistant;

(ii) Mental health professional;

(iii) Education professional;

(iv) Social worker with a bachelor's degree or higher degree with a specialization in the individual child's needs; or

(v) Registered nurse or advanced registered nurse practitioner.

(2) The documentation described in this subsection must be in the form of an:

(a) Individual education plan (IEP);

(b) Individual health plan (IHP);

(c) 504 plan; or

(d) Individualized family service plan (IFSP).

(3) The licensee or designee's written plan and all documentation required under this section must be kept in the child's file and a copy submitted to the department.

(4) The licensee must keep written documentation on file, signed by the parent or guardian, that a visiting health professional may be providing services to the child at the child care program, if applicable.

(5) The licensee must keep written documentation on file that all staff have been trained on how to implement the plan for the individual child.

(6) The written plan must be updated annually or when there is a change in the child's special needs.

(7) See WAC 170-297-5625 regarding supervision, capacity, and staff-to-child ratios for children with documented special needs.

NEW SECTION

WAC 170-297-1000 License required. (1) A school-age program that provides child care for children must be licensed by the department unless exempt under RCW 43.215.010(2).

(2) A child care program claiming an exemption must provide to the department proof that they qualify for an exemption using a department approved form.

NEW SECTION

WAC 170-297-1035 Fire inspection/certification. (1) The license applicant/licensee must conform to rules adopted by the state fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(2) The department must not issue a license until the state fire marshal's office has certified or inspected and approved the facility.

(3) The licensee must continue to comply with state and local fire code following the state fire marshal inspection.

NEW SECTION

WAC 170-297-1050 The licensee. (1) The applicant for a license under this chapter must be twenty-one years of age or older.

(2) The licensee is the individual(s) or organization:

(a) Whose name appears on the license issued by the department;

(b) Responsible for complying with the standards in this chapter, chapter 43.215 RCW, chapter 170-06 WAC DEL background check rules, and other applicable laws or rules; and

(c) Responsible for training staff on the licensing standards in this chapter.

(3) The licensee must comply with all requirements in this chapter unless another code or ordinance is more restrictive. Local officials are responsible for enforcing city or county ordinances and codes such as zoning, building, or environmental health regulations.

(4) The licensee must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

NEW SECTION

WAC 170-297-1075 Child care subsidy. A child care program that receives child care subsidy payments must follow the requirements of the applicable subsidy program. A child care program that receives subsidy payments under the working connections child care or seasonal child care programs must follow the requirements of chapter 170-290 WAC.

NEW SECTION

WAC 170-297-1100 Tribal or military regulated or operated child care—Certification for payment. (1) A child care program that is regulated by an Indian tribe or the federal Department of Defense is exempt from licensing.

(2) A tribe or a child care regulated by the federal Department of Defense may request certification:

(a) For subsidy payment only; or

(b) As meeting licensing standards of this chapter.

(3) A child care program seeking certification under this section must be located on the premises over which the tribe or federal Department of Defense has jurisdiction.

NEW SECTION

WAC 170-297-1125 Orientation required. (1) A license applicant(s) applying for an initial license must complete an orientation provided by the department within twelve months prior to submitting a license application.

(2) The school age program director and the school age site coordinator of the child care program must attend an ori-

entation provided by the department within six months of employment or assuming the position.

NEW SECTION

WAC 170-297-1200 Background checks. (1) The license applicant(s) or licensee(s) must submit a completed background check form and obtain written authorization from the department consistent with the requirements of chapter 170-06 WAC for each of the following:

(a) Any license applicant;

(b) The licensee(s); and

(c) Each staff person or volunteer.

(2) Each individual seeking a first time DEL background check must undergo a fingerprint-based FBI background check. See RCW 43.215.215.

(3) The licensee must keep background check authorization letters from the department on file for the licensee, staff person, or volunteer and must allow the department to inspect the file upon request.

(4) The licensee must not allow any individual who has not been authorized by the department to have unsupervised access to the children in care at any time.

(5) The licensee must verify annually that each individual who is required to have a background check under this section has either obtained a department clearance or has applied for a department background check. The verification must be submitted with the licensee's annual license fee and declarations required under WAC 170-297-1450.

NEW SECTION

WAC 170-297-1250 License application packet—Contents. (1) The individual or entity seeking a license under this chapter is the license applicant.

(2) The license applicant must submit a license application packet that includes:

(a) A completed department application form;

(b) A copy of the applicant's orientation certificate;

(c) Completed background clearance forms for each staff person or volunteer having unsupervised or regular access to the child in care;

(d) Parent, staff and operation policies (handbooks). See WAC 170-297-2350, 170-297-2375, 170-297-2400, and 170-297-2425;

(e) A floor plan, including proposed licensed and unlicensed space with emergency exits and emergency exit pathways identified;

(f) A Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(g) An on-site septic system inspection report if applicable under WAC 170-297-1375;

(h) Well water testing results if applicable under WAC 170-297-1400;

(i) A lead or arsenic evaluation agreement, only for a site located in the Tacoma smelter plume under WAC 170-297-1360;

(j) The license fee under WAC 170-297-1325;

(k) A federal employer identification number; and

(l) A staffing plan to include:

(i) The number and position types and qualifications of staff to meet the projected capacity of the facility;

(ii) How the applicant or licensee will verify that staff hired meet the qualifications as provided in this chapter; and

(iii) Projected staff training plan for the first year of the program.

(3) In addition to subsection (2)(a) through (l) of this section, if the license applicant is an individual, the following must be submitted with the license application:

(a) A copy of a current government issued photo identification;

(b) A copy of the license applicant's Social Security card under 42 U.S.C. 666(a)(13) and RCW 26.23.150 regarding child support, or, if the license applicant does not have a Social Security card, a sworn declaration stating that he or she does not have a Social Security card.

(4) In addition to subsection (2)(a) through (l) of this section, if the license applicant is an entity, a copy of the certificate of incorporation, partnership agreement or similar business organization document must be submitted with the license application.

(5) The licensee must submit a copy of the federal Internal Revenue Service letter showing the applicant's employer identification number (EIN) if the applicant plans to employ staff.

NEW SECTION

WAC 170-297-1275 Application processing. (1) The department may take up to ninety days to complete the licensing process. The ninety days begins when the department receives the license applicant's signed and dated application packet, fees, and background check forms.

(2) If an incomplete application packet is submitted, the department will inform the license applicant of the deficiencies and provide a time frame in which to provide the required information. If an application remains incomplete the department may deny the license.

NEW SECTION

WAC 170-297-1300 Withdrawing an incomplete application. (1) If the license applicant is unable to successfully complete the licensing process within ninety days, the license applicant may withdraw the application and reapply when the applicant is able to meet licensing requirements.

(2) A license applicant who has not withdrawn his or her incomplete application and is unable to meet the application requirements will be denied a license. See RCW 43.215.300.

NEW SECTION

WAC 170-297-1325 Fees—When due. License fees.

(1) The annual license fee is one hundred twenty-five dollars for the first twelve children, plus twelve dollars for each additional child over twelve, or as otherwise set by the legislature.

(2) The license fee is nonrefundable and is due:

(a) With the license applicant's initial license application packet; and

(b) Annually thereafter, thirty days prior to the anniversary date of the license.

(3) Payment must be in the form of a check or money order.

Background check fees.

(4) Each individual required to obtain a department background check must pay the fee established under chapter 170-06 WAC. The fee must be submitted with the individual's completed and signed background check application form.

(5) Each individual submitting a first-time license application and each individual applying for the first time for a department background check clearance must be fingerprinted and pay the processing fee.

NEW SECTION

WAC 170-297-1350 Liability insurance coverage. (1) The license applicant or licensee must, at the time of licensure and at any inspection, provide to the department proof of insurance or self-insurance as required under RCW 43.215.535.

(2) The licensee must:

(a) Notify the department when insurance coverage is terminated within thirty days of termination;

(b) Post notice, clearly visible to parents, guardians, volunteers, and staff, when insurance coverage lapses or is terminated; and

(c) Provide written notice to parents when coverage lapses or is terminated within thirty days of lapse or termination.

(3) The department may deny, suspend, revoke, or not continue a license when the licensee fails to comply with the requirements of this section.

NEW SECTION

WAC 170-297-1360 Lead and arsenic hazards—Tacoma smelter plume. A child care facility in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) must contact the state department of ecology (DOE) and complete a signed access agreement with DOE for further evaluation of the applicant's property and possible arsenic and lead soil sampling.

NEW SECTION

WAC 170-297-1375 Private septic system—Inspection and maintenance. (1) If the licensed premises are served by a private septic system (not connected to a sewer system) the septic system must be maintained in a manner acceptable to the local public health authority.

(2) The licensee must follow the local public health authority's requirements for periodic septic system inspection and maintenance, and keep the inspection and maintenance records on the premises.

(3) If there are no local public health requirements for periodic septic system inspections, the licensee must:

(a) Have the system inspected by a septic system inspector certified by the local health jurisdiction within six months prior to submitting a license application under WAC 170-297-1250 and every three years after a license is issued under this chapter; and

(b) Maintain the septic system as required by the inspection report.

(4) Septic system inspection and maintenance records must be kept on the premises and made available to the department upon request.

NEW SECTION

WAC 170-297-1400 Private well and water system. (1) If the licensed facility gets water from a private well on the premises, the licensee must follow the local public health authority's requirements for periodic water testing, and keep the test records on the premises.

(2) When there are no local public health requirements for periodic water testing, the licensee must:

(a) Test the water for coliform bacteria and nitrates every three years. The test must indicate "safe" levels of coliform bacteria and nitrates as defined by the state department of health; and

(b) Keep the test results records on the premises.

(3) If test results indicate unsafe levels of coliform bacteria or nitrates as defined by the state department of health, the licensee must:

(a) Immediately stop using the well water in the child care and inform the local public health authority and the department;

(b) Take steps required by the local public health authority to repair the well or water system;

(c)(i) If directed by the local public health authority or the department, discontinue child care operations until repairs are made; or

(ii) If the local public health authority and the department determine that child care operations may continue with an alternate source of safe water, provide the safe water as directed; and

(d) Test the water as often as required by the local public health authority until tests indicate safe levels of coliform bacteria and nitrates.

NEW SECTION

WAC 170-297-1410 Department inspection. (1) Prior to the department issuing a license, a department licensor must inspect the proposed indoor and outdoor spaces to be used for child care to verify compliance with the requirements of this chapter.

(2) Access must be granted to the department licensor during the child care hours of operation for the purpose of announced or unannounced monitoring visits to inspect the indoor or outdoor licensed space to verify compliance with the requirements of this chapter.

NEW SECTION

WAC 170-297-1430 Initial license. A child care facility that demonstrates compliance with health and safety requirements of this chapter but may not be in full compliance with all requirements may be issued an initial license.

(1) An initial license is valid for six months from the date issued.

(2) At the department's discretion, an initial license may be extended for up to three additional six month periods not to exceed a total of two years.

(3) The department must evaluate the program staff's ability to follow all of the rules contained in this chapter during the initial license period.

(4) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with other requirements of this chapter at any time; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-297-1450(1).

(5) The department must deny a nonexpiring full license to a licensee operating under an initial license when the licensee does not demonstrate the ability to comply with all the rules contained in this chapter during the initial licensing period.

NEW SECTION

WAC 170-297-1450 Nonexpiring license. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis, at least thirty calendar days prior to the anniversary date (the date the first license is issued) of the license:

(a) The annual nonrefundable license fee as provided in WAC 170-297-1325(1);

(b) A declaration to the department on a department-approved form indicating:

(i) The licensee's intent to continue operating a licensed child care program; or

(ii) The licensee's intent to cease operation on a date certain;

(c) A declaration on a department-approved form that the licensee is in compliance with all department licensing rules; and

(d) Documentation of completed background check applications as determined by the department established schedule as provided in RCW 43.215.215 (2)(f). For each individual required to have a background check clearance, the licensee must verify a current background check clearance or submit a background check application at least thirty days prior to the license anniversary date.

(2) The requirements of subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If the licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicated proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring full license as a result of the licensee's failure to comply with the requirements of this section.

NEW SECTION

WAC 170-297-1525 Change in circumstances. (1) The licensee must report the following changes in the licensee's circumstances to the department within twenty-four hours:

(a) Fire or other structural damage to the licensed child care space or other parts of the premises;

(b) When the licensee becomes aware of a charge or conviction against the licensee or a staff person and the charge or conviction is a disqualifying crime under WAC 170-06-0120;

(c) When the licensee becomes aware of an allegation or finding of abuse or neglect of a child or vulnerable adult made against the licensee or a staff person. The licensee must also report the change in circumstances to the department of social and health services children's administration within twenty-four hours;

(d) Resignation or termination of the program director or site coordinator.

(2) The licensee must notify the department ninety days prior to the following:

(a) Making structural changes to the licensed space;

(b) Changing licensed space usage; and

(c) Requesting a change of capacity.

(3) The licensee must notify the department when liability insurance coverage is terminated within thirty days of termination.

(4) An updated floor plan must be submitted and approved by the department.

(5) A fire marshal visit is required for change of circumstances listed in subsections (1)(a) and (2) of this section.

NEW SECTION

WAC 170-297-1625 Exception to rule. (1) The department cannot waive a requirement in state or federal law.

(2) The department may approve an exception to a rule in this chapter.

(3) An exception to rule request must be:

(a) In writing on a department form;

(b) Submitted to the licensor; and

(c) Approved by the director or director's designee.

(4) The department may approve an exception only for a specific purpose or child.

(5) An exception is time limited and may not exceed the specific time period approved by the department.

(6) If the exception request is approved, the notice of the approved exception must be posted with other notices for parent and public view, unless the exception is for a specific child.

(7) The department may approve an alternate method of achieving a specific requirement's intent as an exception to rule.

(a) The alternate method must not jeopardize the health, safety or welfare of the children in care.

(b) A copy of the department approved exception must be posted on the premises for parent and public view.

(8) The department's denial of an exception request is not subject to appeal under chapter 170-03 WAC.

STAFF QUALIFICATIONS

NEW SECTION

WAC 170-297-1710 Program director. (1) The licensee must serve as or employ a program director who is responsible for the overall management of the child care program and operation.

(2) The program director must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) The program director must:

(a) Be at least twenty-one years of age;

(b) Have two years' experience in management, supervision, or leadership;

(c) Attend a department orientation within six months of employment or assuming the position;

(d) Have a TB test as required under WAC 170-297-1750;

(e) Have a background clearance as required under chapter 170-06 WAC;

(f) Have current CPR and first-aid certification as required under WAC 170-297-1825;

(g) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(h) Have a high school diploma or equivalent;

(i) Have a minimum of forty-five college credits (or thirty college credits and one hundred fifty training hours) in approved school-age credits as specified in the Washington state guidelines for determining related degree and approved credits; and

(j) Have completed twenty hours of STARS training or possess an exemption.

(4) A program director must be on the premises as needed.

(5) When the program director is not on-site the program director must leave a competent, designated staff person in charge. This staff person must meet the qualifications of a site coordinator and may also serve as child care staff when that role does not interfere with management and supervisory responsibilities.

NEW SECTION

WAC 170-297-1715 Site coordinator. (1) A child care program may employ a site coordinator responsible for being on-site with children, program planning, and program implementation. The site coordinator must provide regular supervision of staff and volunteers.

(2) The site coordinator must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) Site coordinator staff must:

(a) Be twenty-one years of age;

(b) Have two years management experience in a related field;

(c) Attend a department orientation within six months of employment or assuming the position;

(d) Have a high school diploma or equivalent;

(e) Have completed thirty college credits in approved school-age credits as specified in the Washington state guidelines for determining related degree and approved credits, or twenty college credits and one hundred clock hours of related community training;

(f) Have completed twenty hours of STARS training or possess an exemption;

(g) Complete ongoing training hours as required under WAC 170-297-1800;

(h) Develop an individual training plan;

(i) Have a food worker card, if applicable; and

(j) Attend an agency orientation as required under WAC 170-297-5800.

(4) A site coordinator must be on the premises for the majority of hours that care is provided each day. If temporarily absent from the program, the site coordinator must leave a competent, designated staff person in charge who meets the qualifications of a site coordinator.

(5) The site coordinator may also serve as child care staff when the role does not interfere with management and supervisory responsibilities.

NEW SECTION

WAC 170-297-1720 Lead teachers. (1) Lead teachers may be employed to be in charge of a child or a group of children.

(2) The lead teacher must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) Lead teachers must:

(a) Be eighteen years of age or older;

(b) Have one year experience in school-age care;

(c) Have a TB test as required under WAC 170-297-1750;

(d) Have a background clearance as required under chapter 170-06 WAC;

(e) Have current CPR and first-aid certification as required under WAC 170-297-1825;

(f) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(g) Have a high school diploma or equivalent;

(h) Complete twenty hours of STARS training within six months of assuming the position of lead teacher;

(i) Complete ongoing training hours as required under WAC 170-297-1800;

(j) Have a food worker card, if applicable; and

(k) Attend an agency orientation as required under WAC 170-297-5800.

(4) Lead teachers are counted in the staff-to-child ratio.

(5) When the site coordinator is off-site or unavailable, lead teachers may assume the duties of site coordinator when they meet the site coordinator minimum qualifications, and may also serve as child care staff when the role does not interfere with management and supervisory responsibilities.

NEW SECTION

WAC 170-297-1730 Program assistants. (1) Program assistants may be employed to assist in program and curriculum under the direction of a lead teacher or higher.

(2) Program assistants under eighteen years of age must not be left in charge of a group of children and may care for children only under direct, visual or auditory supervision by a lead teacher or higher.

(3) Program assistants eighteen years of age or older may have sole responsibility for a child or group of children for a brief period of time when there is a staff person on the premises who meets the lead teacher qualifications.

(4) Program assistants must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(5) Program assistants must:

(a) Be sixteen years of age or older;

(b) Have a TB test as required under WAC 170-297-1750;

(c) Have a background clearance as required under chapter 170-06 WAC;

(d) Have current CPR and first-aid training as required under WAC 170-297-1825;

(e) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(f) Have a food worker card, if applicable; and

(g) Attend an agency orientation as required under WAC 170-297-5800.

(6) Program assistants are counted in the staff-to-child ratio.

NEW SECTION

WAC 170-297-1735 Volunteers. (1) The licensee may utilize volunteers who assist in the program under the direct supervision of the program implementation staff.

(2) The volunteers must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) The volunteer must:

(a) Be sixteen years of age or older;

(b) Have a background check as required under chapter 170-06 WAC;

(c) Attend an agency orientation as required under WAC 170-297-5800;

(d) Have an employment application on file; and

(e) Have a food worker card, if applicable.

(4) It is recommended, but not required, that volunteers have the following:

(a) CPR and first-aid certification;

(b) HIV/AIDS training and annual bloodborne pathogen training; and

(c) TB test.

(5) The volunteer may be counted in the staff-to-child ratio if the volunteer meets all program assistant qualifications, but must be under the direct supervision of the program implementation staff.

NEW SECTION

WAC 170-297-1745 Staff meetings. Staff meetings must be conducted no less than twice per calendar year for planning and program operation. Written documentation of the staff meetings, including content and attendees of each meeting, must be kept on file.

NEW SECTION

WAC 170-297-1750 Tuberculosis. (1) Each staff person must provide documentation signed by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

(a) A negative Mantoux test (also known as a tuberculin skin test (TST)) or negative interferon gamma release assay (IGRA) completed within twelve months before license application or employment; or

(b) A previous or current positive TST or positive IGRA with documentation within the previous twelve months:

(i) Of a chest X ray with negative results; or

(ii) Showing that the individual is receiving or has received therapy for active or latent TB disease and is cleared to safely work in a child care setting. As used in this section, "latent TB" means when a person is infected with the TB germ but has not developed active TB disease.

(2) A TB test or chest X ray may not be required if it is against the health care provider's advice. Documentation that includes a health screening must be signed by the health care professional and submitted that indicates the TB test or chest X ray is not necessary.

NEW SECTION

WAC 170-297-1775 Basic twenty hour STARS training. Prior to working unsupervised with children the director, site coordinator, and lead teacher must register in MERIT and:

(1) Complete the basic twenty hours of STARS training; or

(2) Request an exemption to the STARS training requirement.

NEW SECTION

WAC 170-297-1800 Ongoing training. (1) The director, site coordinator and lead teachers must complete a minimum of ten hours of STARS ongoing training yearly.

(2) Any staff that exceeds the ten-hour ongoing training requirement in any year may carry over up to five hours of ongoing training toward meeting the next year's requirement.

(3) The training may include:

(a) Staff person's choice of training; and

(b) Department directed training.

(4) The program director and on-site coordinator must take five hours of training each year in program management and administration for the first two years in these positions.

NEW SECTION

WAC 170-297-1820 Program provided training. The program staff must be provided with the following training:

(1) Child/adolescent growth and development;

(2) Learning environment and curriculum;

(3) Child observation and assessment;

(4) Families, communities, and schools;

(5) Safety and wellness;

(6) Interactions with children/youth;

(7) Program planning and development;

(8) Professional development and leadership;

(9) Cultural competency and responsiveness;

(10) Youth empowerment; and

(11) Other training as appropriate.

NEW SECTION

WAC 170-297-1825 First aid and cardiopulmonary resuscitation (CPR) certification. (1) Each staff person must have a current first aid and cardiopulmonary resuscitation (CPR) certification as established by the expiration date of the document.

(2) Proof of certification may be a card, certificate or instructor letter.

(3) The first aid and CPR training and certification must:

(a) Be certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification approved by the department;

(b) Include child and adult CPR; and

(c) Include a hands-on component.

NEW SECTION

WAC 170-297-1850 HIV/AIDS training—Bloodborne pathogens plan. (1) Each staff person must complete a one-time training approved by DOH under chapter 70.24 RCW on the prevention and transmission of HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome).

(2) The licensee must have a written bloodborne pathogens exposure control plan that includes:

(a) A list of the staff and volunteers providing child care who may be exposed to bloodborne pathogens; and

(b) Procedures for cleaning up bodily fluid spills (blood, feces, nasal or eye discharge, saliva, urine, or vomit), including the use of gloves, proper cleaning and disinfecting of contaminated items, disposal of waste materials, and handwashing.

(3) Staff must be trained in the bloodborne pathogens exposure control plan annually and the licensee must document this training in individual personnel files.

NEW SECTION

WAC 170-297-1925 Assistants and volunteers—Supervision. (1) The licensee or designee is responsible for supervision of program staff.

(2) The licensee or designee must be aware of what staff are doing and available and able to respond if the need arises to protect the health and safety of the children.

(3) When supervising assistants and volunteers, the licensee or designee must be within visual or auditory range of an assistant or volunteer.

RECORDKEEPING, REPORTING AND POSTING

NEW SECTION

WAC 170-297-2000 Recordkeeping—Records available to the department. The licensee must keep all records required in this chapter for a minimum of five years:

(1) All records from the previous twelve months must be kept in the licensed space as defined in WAC 170-297-0010 and be available immediately for the department's review.

(2) Records older than twelve months to five years old must be provided to the department within two weeks of the date of the department's written request.

NEW SECTION

WAC 170-297-2025 Child records—Confidentiality. (1) Records for all children must be kept in a confidential manner.

(2) Each enrolled child's health record must be available to staff when needed for medical administration or emergencies.

(3) A child's parent or guardian must be allowed access to all records for their child.

NEW SECTION

WAC 170-297-2050 Child records—Contents. (1) An enrollment record is required for every child who is enrolled and counted in capacity. Each child's enrollment record must include the following:

(a) The child's beginning enrollment date;

(b) End of enrollment date for children no longer in the licensee's care;

(c) The child's birth date;

(d)(i) The child's current immunization record, on a DOH certificate of immunization status (CIS) form signed by the parent or guardian; or

(ii) A DOH certificate of exemption (COE) form signed by the parent for religious, philosophical, or personal exemption; or

(iii) A DOH certificate of exemption (COE) form signed by the parent and a health care professional for a medical exemption;

(e) The child's health history that includes:

(i) Known health conditions such as allergies, asthma, and diabetes;

(ii) Date of last physical exam; and

(iii) Date of last dental exam;

(f) Names, phone numbers, and addresses of persons authorized to pick up the child;

(g) Emergency contacts. If no emergency contact is available, a written emergency contact plan may be accepted;

(h) Parent or guardian information including name, phone numbers, address, and contact information for reaching the family while the child is in care;

(i) Medical and dental care provider names and contact information, if the child has providers. If the child has no medical or dental provider, the parent or guardian must provide a written plan for medical or dental injury or incident; and

(j) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian.

(2) If applicable, a child's records must include:

(a) Injury/incident reports (see WAC 170-297-3575 and 170-297-3600);

(b) A medication authorization and administration log (see WAC 170-297-3375);

(c) A plan for special or individual needs of the child (see WAC 170-297-0050); and

(d) Documentation of use of physical restraint (see WAC 170-297-6250).

(3) The child's records must include signed parent permissions (see WAC 170-297-6400) as applicable for:

(a) Field trips;

(b) Transportation; and

(c) Visiting health professionals providing services to the child at the child care program site.

NEW SECTION

WAC 170-297-2075 Staff records. Records for each staff person must include documentation of:

(1) Current first aid, child and adult CPR training certification;

(2) Bloodborne pathogens training certification;

(3) HIV/AIDS training certification;

(4) TB test results or documentation as required under WAC 170-297-1750;

(5) Current state food worker card for staff if required under WAC 170-297-7675;

(6) Completed background check form if applicable under WAC 170-297-1200 and a copy of the department-issued authorization letter;

(7) Copy of a current government issued picture identification;

(8) Emergency contact information;

(9) Completed application form or resume for staff when hired;

(10) Documentation for staff of:

(a) Twenty hour basic STARS training;

(b) Ongoing training completed; and

(c) Registration in MERIT;

(11) Record of training provided to staff and volunteers.

NEW SECTION

WAC 170-297-2125 Child attendance records—Staff to child ratio records. The following records must also be kept on file:

(1) Daily attendance for each child counted in capacity that includes the:

(a) Child's dates of attendance;

(b) Time the child arrives or returns to the child care facility, including the signature of the person authorized by the child's parent or guardian to sign the child in; and

(c) Time the child leaves the child care facility including signature of the authorized person to sign the child out.

Staff must sign a child in/out where the parent or guardian has given specific written permission that would allow that child to leave the facility.

(2) Names of staff being counted to meet the daily staff-to-child ratio requirements.

NEW SECTION

WAC 170-297-2150 Facility records. The following facility records must be kept:

(1) Fire extinguisher annual maintenance or receipts indicating annual purchase of new fire extinguisher(s), under WAC 170-297-3000;

(2) Septic system inspection and maintenance, if required under WAC 170-297-1375;

(3) Water testing results if required under WAC 170-297-1400;

(4) Emergency preparedness evacuation drill records under WAC 170-297-2925;

(5) Documents from any department visits, inspections, or monitoring checklists; and

(6) As applicable, compliance agreements or safety plans between the licensee and the department.

NEW SECTION

WAC 170-297-2175 Materials that must be posted. The following must be posted in the licensed space during operating hours and clearly visible to the parents, guardians, volunteers, and staff:

(1) A statement of the child care program philosophy of child development;

(2) Emergency information posted adjacent to the telephone, including:

(a) 911 or emergency services number;

(b) Name of the child care program, telephone number(s), address, and directions from the nearest major arterial street or nearest cross street to the child care program;

(c) Washington poison center toll-free phone number; and

(d) DSHS children's administration intake (child protective services) toll-free telephone number;

(3) Emergency preparedness plan and drills posted near each emergency exit door with the following information:

(a) Dates and times of previous drills;

(b) Procedure for sounding alarm;

(c) Monthly smoke detector check;

(d) Annual fire extinguisher check;

(e) Floor plan, with emergency exits and emergency exit pathways identified; and

(f) Emergency medical information or explanation of where that information can be found;

(4) Child care licensing information, including:

(a) The current department-issued child care license;

(b) Staff names and work hours; and

(c) If applicable, a copy of current department-approved exceptions to the rules;

(5) Food menus;

(6) If applicable, notice of any current or pending department enforcement action. Notice must be posted:

(a) Immediately upon receipt; and

(b) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;

(7) Notice that the licensee does not have the liability insurance coverage required under WAC 170-297-1350, or that the coverage is lapsed or terminated, if applicable;

(8) A notice stating that additional information about the child care license is available upon request. This information must include:

(a) Copies of department monitoring checklists;

(b) If applicable, any facility licensing compliance agreements (FLCA); and

(c) If applicable, a copy of any enforcement action taken by the department for the previous three years;

(9) A typical daily schedule as described in WAC 170-297-6575; and

(10) Current lesson plans.

NEW SECTION

WAC 170-297-2200 Reporting incidents to 911 (emergency services). The following must be reported immediately to 911 emergency services by the licensee or designee:

(1) A child missing from care, as soon as the staff realizes the child is missing;

(2) Medical emergency (injury or illness) that requires immediate professional medical care;

(3) Incorrect administration of any medication, except nonprescription topical creams or ointments;

(4) Overdose of any oral, inhaled or injected medication;

(5) Fire and other emergencies;

(6) Poisoning or suspected poisoning; and

(7) Other incidents requiring emergency response.

NEW SECTION

WAC 170-297-2225 Reporting incidents to Washington poison center. The licensee or designee must immediately report the following to the Washington poison center, after calling 911, and must follow any instructions from the poison center:

(1) Any poisoning or suspected poisoning;

(2) A child receiving too much of any oral, inhaled or injected medication; and

(3) A child taking or receiving another child's medication.

NEW SECTION

WAC 170-297-2250 Reporting incidents to a child's parent or guardian and the department. (1) The licensee or designee must report to a child's parent or guardian and the department:

(a) Immediately:

(i) Any incident reported under WAC 170-297-2200, after calling 911;

(ii) Any incident reported under WAC 170-297-2225, after calling 911 and Washington poison center;

(iii) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; and

(iv) Use of physical restraint on a child;

(b) Within twenty-four hours:

(i) Injury or other health concern to a child that does not require professional medical treatment (report to parent only);

(ii) Change in child care staff that may impact child care staffing;

(iii) Change in the program phone number or e-mail; and

(iv) Child's exposure to a reportable communicable disease from the list in WAC 246-110-010(4).

(2) The licensee must notify the department when liability insurance coverage terminates within thirty days of termination.

(3) The licensee must give a child's parent or guardian written notice when liability insurance coverage lapses or is terminated within thirty days of lapse or termination.

NEW SECTION

WAC 170-297-2275 Other incident reporting to the department. (1) The licensee or designee must report to the department any of the incidents or changes as required under WAC 170-297-2200, or 170-297-2225, 170-297-2250, 170-297-2300, and 170-297-2325.

(2) Regarding the licensee, staff, or volunteers, the licensee or designee must report to the department within twenty-four hours any:

(a) Pending charge or conviction for a crime listed in WAC 170-06-0120;

(b) Allegation or finding of child abuse or neglect under chapter 26.44 or 74.15 RCW;

(c) Allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(d) Pending charge, conviction, or negative action from outside Washington state consistent with or the same crime listed in WAC 170-06-0120, or the definition of "negative action" as defined in RCW 43.215.010.

NEW SECTION

WAC 170-297-2300 Reporting to DSHS children's administration intake. The licensee or designee is required to report the following to DSHS children's administration intake-child protective services (CPS) or law enforcement as required under RCW 26.44.030, and to the licensor:

(1) Any suspected child abuse or neglect;

(2) A child's disclosure of sexual or physical abuse;

(3) Inappropriate sexual contact between two or more children;

(4) A child's attempted suicide or talk about attempting suicide; and

(5) Death of a child while in care or from injury or illness that may have occurred while the child was in care.

NEW SECTION

WAC 170-297-2325 Notifiable conditions. (1) The licensee or designee must report a staff person, volunteer, or child diagnosed with a notifiable condition as defined in chapter 246-101 WAC to the local health jurisdiction or the state department of health.

(2) Contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

(3) A person must be excluded from the program when diagnosed with a notifiable condition and must not return to the program until approved to do so by the local health officer.

NEW SECTION

WAC 170-297-2350 Policies. (1) The child care program must have written policies for:

(a) Parents and guardians, also known as the parent handbook;

(b) Program and staff.

(2) All policies must be submitted to the department.

NEW SECTION

WAC 170-297-2375 Parent/guardian policies (handbook). The written parent/guardian policies (handbook) must include:

(1) Hours of operation including closures and vacations;

(2) Information on how children's records are kept current, including immunization records;

(3) Enrollment and disenrollment process;

(4) Access to children during child care hours;

(5) Program philosophy (the program's view of child learning and development);

(6) Typical daily schedule, including sample curriculum;

(7) The program's policy on use of media such as movies, television, computers and music, in child learning and development;

(8) Communication plan with parents/guardians including:

(a) How the parent or guardian may contact the child care program staff with questions or concerns;

(b) How the child care program staff will communicate the child's progress with the parent or guardian at least twice a year; and

(c) How the child care program staff will work with parents to support the child;

(9) Written plan for any child's specific needs, if applicable;

(10) Fee and payment plans;

(11) Nondiscrimination statement, including Americans with Disabilities Act statement;

(12) Cultural awareness activities;

(13) Religious activities and how families' specific religious preferences are addressed;

(14) How holidays are recognized in the program;

(15) Confidentiality policy, including when information may be shared. See WAC 170-297-2025;

(16) Items that the licensee requires the parent or guardian to provide;

(17) Guidance and discipline policy. See WAC 170-297-6050;

(18) Reporting suspected child abuse or neglect;

(19) Food service practices, including:

(a) Meal and snack schedule;

(b) How child food preferences are addressed; and

(c) Guidelines on food brought from the child's home;

(20) Off-site field trips requirements. See WAC 170-297-2450;

(21) Transportation requirements. See WAC 170-297-6475;

(22) Staffing plan;

(23) Access to staff training and professional development records;

(24) Health care and emergency preparedness policies including:

(a) Emergency preparedness and evacuation plans. See WAC 170-297-2825 and 170-297-2850;

(b) Injury or medical emergency response and reporting;

(c) Medication management including storage and dispensing. See WAC 170-297-3325;

(d) Exclusion/removal policy of ill persons. See WAC 170-297-3210;

(e) Reporting of notifiable conditions to public health;

(f) Immunization tracking. See WAC 170-297-3250; and

(g) Infection control methods, including:

(i) Handwashing (WAC 170-297-3625) and, if applicable, hand sanitizers (WAC 170-297-3650); and

(ii) Cleaning and sanitizing procedures including the sanitizing method and products used. See WAC 170-297-3850 through 170-297-3925;

(25) Nonsmoking policy. See WAC 170-297-4050;

(26) Drug and alcohol policy. See WAC 170-297-4025; and

(27) A signature page with parent/guardian signature documenting that the parent/guardian has received the handbook policies. The signature page must be kept on file on the premises.

NEW SECTION

WAC 170-297-2400 Program/operations policies. (1) The child care program must have written program/operations policies that include:

(a) All information in the parent/guardian handbook under WAC 170-297-2375;

(b) Plans to keep required program/staff records current;

(c) Child supervision requirements;

(d) Mandatory reporting requirement of suspected child abuse and neglect and other incidents under WAC 170-297-2300;

(e) A plan for off-site field trips;

(f) A plan for transporting children;

(g) Medical emergency, fire, disaster and evacuation responsibilities;

(h) Guidance and discipline responsibilities; and

(i) A plan for staff to include:

(i) Staff responsibilities;

(ii) Staff training;

(iii) Staff expectations; and

(iv) Professional development.

(2) Program/operations policies may be integrated with staff policies required under WAC 170-297-2425 in a single written policy document.

NEW SECTION

WAC 170-297-2425 Staff policies. (1) The child care program must have written staff policies and provide training on the policies to all staff and volunteers. Staff policies must include:

(a) All the information in the parent/guardian handbook under WAC 170-297-2375, except fees;

(b) A plan for keeping staff records current including:

(i) Completed background check forms and department clearance letters;

(ii) First aid and CPR certification;

(iii) TB test results;

(iv) Required training and professional development for staff persons; and

(v) Training that the licensee must provide to staff;

(c) Job descriptions;

(d) Staff responsibilities for:

(i) Child supervision requirements;

(ii) Guidance/discipline techniques;

(iii) Food service practices;

(iv) Off-site field trips;

(v) Transporting children;

(vi) Health, safety and sanitization procedures;

(vii) Medical emergencies, fire, disaster and evacuations; and

(viii) Mandatory reporting of suspected child abuse and neglect.

(2) The licensee or designee must keep documentation of all staff training on policies.

(3) Staff policies may be integrated with program/operations policies required under WAC 170-297-2400 in a single written policy document.

NEW SECTION

WAC 170-297-2450 Off-site activity policy. A written policy for off-site activities is required and must include:

(1) Parent notification and permissions. See WAC 170-297-6400;

(2) Supervision plan;

(3) Transportation plan. See WAC 170-297-6475;

(4) Emergency procedures including bringing each child's:

(a) Emergency contact information;

(b) Medical records;

(c) Individual medications for children who have them; and

(d) Medication administration log;

(5) Medication management;

(6) A policy for maintaining a complete first-aid kit; and

(7) A policy for charging of fees, if any.

FIRE AND EMERGENCY PREPAREDNESS

NEW SECTION

WAC 170-297-2575 Combustible and flammable materials. (1) The licensee must not allow combustible materials (including, but not limited to, lint, or rags soaked in grease, oils, or solvent) to accumulate; these items must be removed from the building or stored in a closed metal container.

(2) The licensee must store items labeled "flammable," in areas that are inaccessible to children and away from exits.

NEW SECTION

WAC 170-297-2600 Furnaces and other heating devices. (1) The licensee must keep paper, rubbish, or combustible materials at least three feet away from any furnace, fireplace, or other heating device.

(2) Furnaces must be inaccessible to the children, isolated, enclosed or protected.

(3) Any appliance or heating device that has a hot surface capable of burning a child must be made inaccessible to the children in care during operating hours when the appliance or device is in use or is still hot after use.

NEW SECTION

WAC 170-297-2625 Electrical motors. The licensee must keep electrical motors on appliances free of accumulated dust or lint.

NEW SECTION

WAC 170-297-2675 Open flame devices, candles, matches and lighters. (1) The licensee must not use or allow the use of open flame devices in the licensed space or any space accessible to the children during operating hours.

(2) The licensee must not use or allow the use of candles during operating hours.

(3) The licensee must keep matches and lighters inaccessible to children.

NEW SECTION

WAC 170-297-2700 Emergency flashlight. The licensee must have a working flashlight available for use as an emergency light source. The licensee must have extra batteries if the flashlight is powered by batteries.

NEW SECTION

WAC 170-297-2725 Portable heaters and generators. (1) The licensee must not use or allow the use of portable heaters or fuel-powered generators in any area inside of licensed space during operating hours.

(2) When a portable fuel-powered generator is in use:

(a) The generator must be placed at least fifteen feet from buildings, windows, doors, ventilation intakes, or other places where exhaust fumes may be vented into the licensed space; and

(b) Appliances must be plugged directly into the generator or to a heavy duty outdoor-rated extension cord that is plugged into the generator.

NEW SECTION

WAC 170-297-2775 Telephone. (1) The licensee must have a working telephone in the licensed space.

(2) The licensee must have a telephone readily available with sufficient backup power to function for at least five hours in the event of an electrical power outage.

NEW SECTION

WAC 170-297-2825 Fire evacuation plan. (1) If there is a fire during child care operating hours, the licensee's and program staff's first responsibility is to evacuate the children to a safe place outside.

(2) The licensee or designee must develop a written fire evacuation plan and post it at a place that is clearly visible to the staff, parents, guardians, and volunteers. The evacuation plan must be evaluated annually and updated as needed.

(3) The evacuation plan must include:

(a) An evacuation floor plan that identifies emergency exit pathways, emergency exit doors, and emergency exit windows;

(b) Method(s) to be used for sounding an alarm;

(c) Actions to be taken by the person discovering the fire;

(d) A written description of how the licensee or program staff will evacuate all children, including nonambulatory children;

(e) Calling 911 after evacuating the children;

(f) How the licensee or program staff will account for all of the children in attendance;

(g) Where children and program staff will gather away from the building pending arrival of the fire department or emergency response; and

(h) How the licensee or designee will inform parents or guardians and arrange pick up of children if needed.

NEW SECTION

WAC 170-297-2850 Disaster plan. (1) The licensee must have a written disaster plan for emergencies other than fire. The plan must be:

(a) Reviewed by the licensee annually and updated as needed;

(b) Reviewed by program staff annually or when updated, with signature documentation of review; and

(c) Reviewed with parents or guardians when a child is enrolled, and when the plan is updated.

(2) The written disaster plan must cover at minimum the following:

(a) For disasters that may require evacuation:

(i) How the licensee or program staff will evacuate all children, especially those who are nonambulatory;

(ii) What to take when evacuating the children, including:

(A) First-aid kit;

(B) Child medication records; and

(C) If applicable, individual children's medication;

(iii) Where to go;

(iv) How the licensee and program staff will account for all of the children in attendance; and

(v) How the children will be reunited with their parents or guardians after the event;

(b) Earthquake procedures including:

(i) What the licensee or program staff will do during an earthquake;

(ii) How the licensee or program staff will account for all of the children in attendance; and

(iii) After an earthquake, how the licensee or designee will assess whether the licensed space is safe for the children;

(c) Lockdown of the facility or shelter-in-place, including:

(i) How doors and windows will be secured if needed; and

(ii) Where children will stay safely inside the facility; and

(d) How parents and guardians will be contacted after the emergency situation is over.

(3) The licensee must keep on the premises a three-day supply of food, water, and medications required by individual children for use in a disaster, lockdown, or shelter-in-place incident.

(4) As used in this section, "lockdown" means to remain inside the child care facility when police or an official emergency response agency notifies the licensee or program staff that it is unsafe to leave the facility or be outdoors during an emergency situation.

(5) As used in this section, "shelter-in-place" means an identified neighborhood location that the licensee or program staff must take the children to during an emergency situation.

NEW SECTION

WAC 170-297-2875 Fire, disaster training for staff and volunteers. (1) The licensee or designee must provide fire, evacuation, and disaster training for all program staff and volunteers when the individual is first employed, when the training content is updated, and at least once each calendar year. The training must include:

(a) All elements of the fire, evacuation and disaster plans;

(b) Operation of the fire extinguishers;

(c) How to test the smoke detectors and carbon monoxide detectors and replace detector batteries, if required; and

(d) Program staff responsibilities in the event of a fire or disaster.

(2) The training must be documented in the program staff's or volunteer's personnel file.

NEW SECTION

WAC 170-297-2900 Emergency drills. The licensee and program staff must practice emergency drills with the children as follows:

(1) Fire/evacuation drill: Once each calendar month;

(2) Earthquake or lockdown/shelter-in-place drill: Once every three calendar months; and

(3) Emergency drills must be conducted during different times of the day.

NEW SECTION

WAC 170-297-2925 Record of emergency drills. The licensee or designee must keep records of emergency drills performed and post the records as required in WAC 170-297-2175. Records must include:

(1) The date and time the drill took place;

(2) Program staff who participated;

(3) Number of children who participated;

(4) Length of drill; and

(5) Notes about how the drill went and improvements, if any, that need to be made.

NEW SECTION

WAC 170-297-2975 Additional method to sound an alarm. The licensee must have an additional method to sound an alarm that is used only in a fire, emergency situation, or drill.

NEW SECTION

WAC 170-297-3000 Fire extinguishers. (1) The licensee must have working fire extinguishers, readily available. A fire extinguisher must be:

(a) Located on each level of the licensed premises used for child care; and

(b) Mounted:

(i) Within seventy-five feet of an exit; and

(ii) Along the path of an exit.

(2) A fire extinguisher may be mounted in a closed unlocked closet. There must be:

(a) A sign on the closet door to indicate that a fire extinguisher is mounted inside; and

(b) No obstructions blocking access to the closet.

(3) The licensee must have documentation on file of annual:

(a) Fire extinguisher maintenance; or

(b) Proof of purchasing new extinguishers.

HEALTH

NEW SECTION

WAC 170-297-3200 Health plan. (1) A written health plan must be in place for the program and contain the following:

(a) Communicable disease notification under WAC 170-297-3210;

(b) Exclusion of ill person under WAC 170-297-3210;

(c) Exclusion of person diagnosed with a notifiable condition under WAC 170-297-2325;

(d) Immunization tracking under WAC 170-297-3250 through 170-297-3300;

(e) Medication management under WAC 170-297-3315 through 170-297-3550;

(f) Medication storage under WAC 170-297-3325;

(g) Injury treatment under WAC 170-297-3575 through 170-297-3600;

(h) Abuse and neglect protection and training under WAC 170-297-6275;

(i) Caring for children with special needs under WAC 170-297-0050;

(j) Care for animals on the premises;

(k) Handwashing and hand sanitizers under WAC 170-297-3625 through 170-297-3650;

(l) Food and food services;

(m) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, and toileting equipment, will be cleaned and sanitized; and

(n) Cleaning and sanitizing laundry under WAC 170-267-3850.

(2) The health plan must be reviewed and dated by a physician, a physician's assistant, or a registered nurse and submitted to the department every three years.

NEW SECTION

WAC 170-297-3210 Communicable disease procedure. (1) When a licensee or program staff person becomes aware that any program staff person or child in care has been diagnosed with any of the communicable diseases as defined in WAC 246-110-010, the licensee or designee must:

(a) Notify parents or guardians of each of the children in care within twenty-four hours; and

(b) Follow the health policy before providing care or before readmitting the program staff person or child into the child care.

(2) The licensee's health policy must include provisions for excluding or separating a child or program staff person with a communicable disease. Children with any of the following symptoms must be excluded from care until guidelines permit readmission:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

(i) Earache;

(ii) Headache;

(iii) Sore throat;

(iv) Rash; or

(v) Fatigue that prevents the individual from participating in regular activities;

(b) Vomiting that occurs two or more times in a twenty-four hour period;

(c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period; or

(d) Drainage of thick mucus or pus from the eye.

NEW SECTION

WAC 170-297-3250 Immunization tracking. The licensee or designee is required to track each child's immunization status in accordance with WAC 246-105-060. The child care program must:

(1) Keep all DOH approved forms described in WAC 246-105-050 for each enrolled child;

(2) Keep a list of currently enrolled children with medical, religious, philosophical, or personal immunization exemptions. This list must be sent to the local health department upon request;

(3) Return the department of health CIS or applicable form to the parent when the child is withdrawn from the child care program. A child care program may not withhold from the parent a child's health department-approved form for any reason, including nonpayment of child care program fees; and

(4) Provide access to immunization records of each child enrolled to agents of the state or local health department.

NEW SECTION

WAC 170-297-3275 Accepting a child who does not have current immunizations. (1) The child care program may accept a child who is not current with immunizations on a conditional basis if immunizations are:

(a) Initiated before or on enrollment; and

(b) Completed as soon as medically possible.

(2) The child care program must have on file a document signed and dated by the parent or guardian stating when the child's immunizations will be brought up to date.

NEW SECTION

WAC 170-297-3300 Immunizations—Exemption. The child care program may accept a child without any immunizations if the parent or guardian provides a DOH certificate of exemption form indicating a medical, religious, philosophical, or personal exemption as provided in WAC 246-105-060.

NEW SECTION

WAC 170-297-3315 Medication management. (1) The child care program's health care policy must include:

(a) Medication management;

(b) Safe medication storage; and

(c) Whether the licensee chooses to give medications to children in care.

(2) If the licensee chooses to give medications to children in care, the program policy must include:

(a) How giving medications will be documented (medication log), including documenting when a medication is given or not given as prescribed or as indicated on the permission form; and

(b) Permission to give medications to a child signed by the child's parent or guardian, and by a licensed medical professional when appropriate.

(3) Only a trained and authorized program staff person may give medication or observe a child taking his or her own medication as described in WAC 170-297-3550.

(4) Prior to being authorized to give medications to children in care, the licensee or trained and authorized program staff person must complete medication management training.

(5) If the licensee chooses not to give any medications to children in care, the licensee or designee must inform parents in the parent/guardian handbook.

(6) If the licensee or program staff person decides not to give a specific medication to a child after having received written permission by the child's parent or guardian, the licensee or program staff person must immediately notify the parent or guardian of the decision to not give the medication.

(7) The licensee and program staff must make reasonable accommodations and give medication if a child has a condition where the Americans with Disabilities Act (ADA) would apply.

NEW SECTION

WAC 170-294-3325 Medication storage. (1) The licensee and program staff must store all medications, as well as vitamins, herbal remedies, dietary supplements, and pet medications as described in the following table:

(a) In a locked container or cabinet until used; or

(b) Inaccessible to children. The licensee must keep emergency rescue medications listed in subsection (3)(a)(i) through (vi) of this section inaccessible but available for emergency use to meet the individual's emergency medical needs.

(2) The licensee and program staff must store all controlled substances in a locked container.

Medication Storage Table

This list is not inclusive of all possible items in each category. Medications must be maintained as directed on the medication label, including refrigeration if applicable.

(3)	If the medication is a (an):	The medication must be stored in a locked container or cabinet.	The medication must be stored inaccessible to children.
(a)	Individual's emergency rescue medications:		
(i)	Any medication used to treat an allergic reaction;		X
(ii)	Nebulizer medication;		X
(iii)	Inhaler;		X
(iv)	Bee sting kit;		X
(v)	Seizure medication;		X
(vi)	Other medication needed for emergencies.		X
(b)	Nonprescription medications, including herbal or natural:		
(i)	Pain reliever, cough syrup, cold or flu medication;	X	
(ii)	Vitamins, all types including natural;	X	
(iii)	Topical nonprescription medication;		X
(iv)	Hand sanitizer, when not in use.		X

Medication Storage Table			
(c)	Prescription medication:		
(i)	Intended use -Topical;	X	
(ii)	Intended use - Ingestible, inhaled or by injection.	X	
(d)	Pet medications (all types).	X	

NEW SECTION

WAC 170-297-3375 Medication permission. (1) The child care program must have written permission from a child's parent or guardian to give a child any medication. The permission must include:

(a) Child's first and last name;

(b) Name of the medication and condition being treated;

(c) Frequency and amount of dose to be given;

(d) How medication is to be given;

(e) Medication storage requirements;

(f) Expected side effects of the medication;

(g) Start and stop date for administering medication not to exceed thirty calendar days, except as provided in subsection (2) of this section;

(h) Parent or guardian signature; and

(i) Date of signature.

(2) A parent or guardian may give up to one hundred eighty calendar days written permission for use of the following:

(a) Sun screen;

(b) Hand sanitizers; or

(c) Hand wipes with alcohol.

(3) For prescription medications, the parent permission form is effective up to the number of days stated on the medication label. The licensee must not give medication past the date prescribed on the label.

(4) A written record of medication administration (medication log) must be kept that includes the:

(a) Child's name;

(b) Name of medication;

(c) Dose given;

(d) Dates and time of each medication given; and

(e) Name and signature of the person administering the medication.

(5) The parent or guardian must be allowed to review their own child's written medication administration records.

(6) Any unused medication must be returned to the child's parent or guardian.

(7) Medication permission forms must be kept confidential.

(8) Medication permission forms and medication logs for the previous twelve months must be kept in the licensed space and available for review by the licensor.

NEW SECTION

WAC 170-297-3425 Medication requirements. The licensee or designee must follow the medication directions for managing and giving prescription and nonprescription medication for the individual children in care. The licensee or designee must not give or allow giving of a medication:

(1) That does not have age, dosage and frequency directions, and information about potential adverse reaction;

(2) That has expired; or

(3) For any purpose or condition other than prescribed or described on the medication label.

NEW SECTION

WAC 170-297-3450 Sedating a child prohibited. Program staff must not give or allow giving of any medication for the purpose of sedating a child unless the medication has been prescribed for that purpose by a qualified health care professional.

NEW SECTION

WAC 170-297-3475 Prescription medication. The licensee or program staff may give a prescribed medication to a child only if the following conditions are met:

(1) The medication is prescribed only for the child the medication is being given to;

(2) The parent or guardian has provided written permission as described in WAC 170-297-3375;

(3) The prescribed medication is given in the amount and frequency prescribed by the child's health care professional with prescription authority;

(4) The prescribed medication is given only for the purpose it is prescribed for or the condition it is prescribed to treat;

(5) The medication must:

(a) Be in the original container;

(b) Be labeled with the child's first and last name; and

(c) Have a nonexpired expiration date;

(6) The container must have, or the parent or guardian must provide, information from the pharmacy about:

(a) Medication storage; and

(b) Potential adverse reactions or side effects; and

(7) The medication has been stored at the proper temperature noted on the container label or pharmacy instructions.

NEW SECTION

WAC 170-297-3525 Nonprescription medications. The licensee or designee may give nonprescription medications, as defined in this chapter, only when the following conditions are met:

(1) The parent or guardian has given signed written permission as provided in WAC 170-297-3375.

(2) The nonprescription medication:

(a) Is given to or used with a child only in the dosage, frequency and as directed on the manufacturer's label;

(b) Is given in accordance with the age or weight of the child needing the medication;

(c) Is given only for the purpose or condition that the medication is intended to treat;

(d) Is in the original container; and

(e) Has a nonexpired expiration date, if applicable.

(3) The medication container or packaging includes, or the parent or guardian provides information about:

(a) Medication storage; and

(b) Potential adverse reactions or side effects; and

(4) The medication has been stored at the proper temperature noted on the container label or instructions.

NEW SECTION

WAC 170-297-3550 Children taking their own medication. The licensee may permit a child to take his or her own medication if:

(1) The licensee follows all of the requirements in WAC 170-297-3475 (1) through (5);

(2) The child is physically and mentally capable of properly taking the medication;

(3) The licensee has on file the child's parent or guardian written approval for the child to take his or her own medication;

(4) The medication and related medical supplies are locked and inaccessible to other children and unauthorized persons, except emergency rescue medications that may be stored inaccessible to other children but not locked; and

(5) A trained and authorized program staff person observes and documents in the child's medication administration record that the medication was taken or not taken.

NEW SECTION

WAC 170-297-3575 Injuries requiring first aid only. When a child has an injury that requires first aid only, a written or verbal notice must be given by program staff to the parent or guardian and a record must be kept of the notice on file.

NEW SECTION

WAC 170-297-3600 Injuries or illness requiring professional medical treatment. (1) When program staff becomes aware that a child's injury or illness may require professional medical treatment, the licensee or designee must:

(a) Call 911, when applicable, and follow their recommendations;

(b) Administer first aid; and

(c) Call the child's parent or guardian.

(2) After taking actions as prescribed in subsection (1) of this section, the licensee or designee must:

(a) Call the department; and

(b) Within twenty-four hours, submit an injury/incident report form to the department.

(3) The injury/incident report form must include:

(a) The name of child;

(b) The date, time and location where the injury or illness occurred;

(c) A description of the injury or illness;

(d) The names of program staff present;

(e) The action taken by program staff; and

(f) The signature of program staff.

NEW SECTION

WAC 170-297-3625 Handwashing procedure. (1) The licensee or program staff must follow and teach children proper handwashing procedures. Proper handwashing procedures include:

(a) Washing hands with warm water and liquid soap for a minimum of twenty seconds;

(b) Drying hands with a paper towel, single-use cloth towel or air hand dryer; and

(c) Turning off the water with paper towel or single use cloth towel.

(2) Paper towels must be disposed of after a single use.

(3) If cloth towels are used, they must be washed and sanitized after each use.

(4) If an air hand dryer is used, it must have a heat guard to prevent burning and must turn off automatically.

NEW SECTION

WAC 170-297-3635 When handwashing is required. (1) Program staff must wash hands:

(a) Upon arriving to the program;

(b) After personal toileting or assisting a child with toileting;

(c) Before and after giving medication or applying topical ointment;

(d) After attending to an ill or injured child;

(e) After contact with bodily fluids;

(f) Before preparing, serving, or eating food;

(g) When returning from playground/outside;

(h) After handling garbage and garbage receptacles;

(i) Before and after handling or feeding pets/animals;

(j) After smoking; and

(k) As needed when hands are soiled.

(2) Children must wash their hands:

(a) Upon arrival to the program;

(b) When returning from playground and/or outside;

(c) Before the child eats;

(d) Before the child participates in food activities;

(e) After the child's toileting;

(f) Before and after handling or feeding pets/animals;

(g) After touching bodily fluids, including after sneezing or coughing; and

(h) As needed when hands are soiled.

NEW SECTION

WAC 170-297-3650 Hand sanitizers. (1) Program staff may allow the use of hand sanitizer products when a child's parent or guardian has given written and signed permission as described in WAC 170-270-3375(2) for hand sanitizer use.

(2) Hand sanitizer products may be used:

(a) When handwashing facilities are not available, such as an outing, emergency, or disaster; or

(b) After proper handwashing.

(3) Hand sanitizer gels must not be used in place of proper handwashing if handwashing facilities are available.

NEW SECTION

WAC 170-297-3700 Carpets. (1) The licensee must clean installed carpet in the licensed space at least twice each

calendar year, or more often when soiled, using a carpet shampoo machine, steam cleaner, or dry carpet cleaner.

(2) Where the licensee does not have decision-making authority over the licensed premises, document verification of compliance is acceptable.

NEW SECTION

WAC 170-297-3850 Cleaning laundry. When the licensee does child care laundry on-site, the licensee must wash the laundry using:

(1) Laundry soap or detergent; and

(2) Sanitize as defined in WAC 170-297-0010.

NEW SECTION

WAC 170-297-3875 Cleaning and sanitizing toys. The licensee must clean and sanitize toys as provided in WAC 170-297-0010:

(1) Before a child plays with a toy that has come into contact with another child's mouth or bodily fluids;

(2) After being contaminated with bodily fluids or visibly soiled; or

(3) Not less than weekly when the toys have been used by the children.

NEW SECTION

WAC 170-297-3925 Cleaning, sanitizing, and disinfecting table. (1) The following table describes the minimum frequency for cleaning, sanitizing, or disinfecting items in the licensed space. Where the licensee does not have decision-making authority over the licensed premises, document verification of compliance is acceptable.

CLEANING, SANITIZING, AND DISINFECTING TABLE					
		"X" means CLEAN	And SANITIZE or DISINFECT	FREQUENCY	
(a)	Kitchen countertops/tabletops, floors, doorknobs, and cabinet handles.	X	Sanitize (see subsection (3) of this section)	Daily or more often when soiled.	
(b)	Food preparation/surfaces.	X	Sanitize (see subsection (3) of this section)	Before/after contact with food activity; between preparation of raw and cooked foods.	
(c)	Carpets and large area rugs/small rugs.			(i)	Vacuum daily.
				(ii)	Installed carpet - Clean yearly or more often when soiled using a carpet shampoo machine, steam cleaner, or dry carpet cleaner.
(d)	Utensils, surfaces/toys that go in the mouth or have been in contact with other body fluids.	X	Sanitize (see subsection (3) of this section)	After each child's use.	
(e)	Toys that are not contaminated with bodily fluids. Dress-up clothes (not worn on the head or come into contact with the head while dressing).	X	Sanitize (see subsection (3) of this section)	Weekly or more often when visibly soiled.	
(f)	Hats and helmets.	X		After each child's use or use disposable hats that only one child wears.	
(g)	Wash cloths or single-use towels	X	Sanitize (see subsection (3) of this section)	After each use.	
(h)	Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.	X	Disinfect (see subsection (2) of this section)	Daily or more often when soiled.	
(i)	Toilet seats, toilet training rings, toilet handles, doorknobs or cubicle handles, floors.	X	Disinfect (see subsection (2) of this section)	Daily or immediately if visibly soiled.	
(j)	Toilet bowls.	X	Disinfect (see subsection (2) of this section)	Daily or more often as needed (e.g., child vomits or has explosive diarrhea, etc.).	
(k)	Changing tables, potty chairs (use of potty chairs in child care is discouraged because of high risk of contamination).	X	Disinfect (see subsection (2) of this section)	After each child's use.	
(l)	Waste receptacles.	X		Daily or more often as needed.	

(2) "Disinfect" or "disinfecting" means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

(3) "Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

NEW SECTION

WAC 170-297-3950 Pest control. (1) The licensee must keep the premises free from rodents, fleas, cockroaches, and other insects and pests.

(2) If pests are present in the licensed space, the licensee must:

(a) Take action to remove or eliminate pests; and

(b) Use the least poisonous method of pest management possible; or

(c) Use chemical pesticides for pest management. If chemical pesticides are used, the licensee must:

(i) Post a notice visible to parents, guardians and staff forty-eight hours in advance of the application of chemical pesticides; and

(ii) Comply with the Washington state department of agriculture's compliance guide for *Pesticide use at Public Schools (K-12) and Licensed Day Care Centers* in applying chemical pesticides.

(3) Where the licensee does not have decision-making authority over the licensed premises, document verification of compliance is acceptable.

NEW SECTION

WAC 170-297-4000 Lead, asbestos, arsenic and other hazards. The licensee must take action to prevent child exposure when the licensee becomes aware that any of the following are present in the indoor or outdoor licensed space:

(1) Lead based paint;

(2) Plumbing containing lead or lead solders;

(3) Asbestos;

(4) Arsenic or lead in the soil or drinking water;

(5) Toxic mold; or

(6) Other identified toxins or hazards.

NEW SECTION

WAC 170-297-4025 Drugs and alcohol. (1) The licensee, staff and volunteers must not:

(a) Have or use illegal drugs on the premises;

(b) Consume or be under the influence of alcohol during operating hours; or

(c) During operating hours, be under the influence of drugs that would impair the ability to provide care for the children as provided in this chapter.

(2) The licensee, staff and volunteers must follow the school districts drug free zone policy if the child care program is located on school district property.

NEW SECTION

WAC 170-297-4050 No smoking. (1) As required by chapter 70.160 RCW, the licensee and program staff must, under the following conditions, prohibit smoking by anyone:

(a) In any outdoor or indoor licensed space;

(b) Within twenty-five feet of any entrance, exit, window, or ventilation intake of the facility; or

(c) In motor vehicles used to transport children.

(2) Program staff must keep tobacco products, cigarettes and containers holding cigarette butts, cigar butts, or ashes inaccessible to the children.

NEW SECTION

WAC 170-297-4075 First-aid kit. (1) The licensee must have a complete first-aid kit at all times:

(a) In the licensed space;

(b) On any off-site trip; and

(c) In any vehicle used to transport children in care.

(2) A complete first-aid kit must include clean:

(a) Disposable nonporous protective gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice packs;

(h)(i) Mercury free thermometer that is:

(A) Used with a disposable sleeve; or

(B) Cleaned and sanitized after each use; or

(ii) A single-use thermometer that is disposed of after a single use;

(i) A sling, or a large triangular bandage; and

(j) Adhesive tape.

(3) The first-aid kit must include a current first-aid manual.

NEW SECTION

WAC 170-297-4100 Poisons, chemicals and other substances. (1) The licensee and program staff must:

(a) Store poisons in a locked container inaccessible to children and where poisons will not contaminate food;

(b) If poisons are not in the original container, clearly label the container with the name of the product and the words "poison" or "toxic."

(2) The following chemicals and other substances that belong to the program or program staff must be stored inaccessible to children:

(a) Nail polish remover;

(b) Sanitizers and disinfectants;

(c) Household cleaners and detergents;

(d) Toxic plants;

(e) Plant fertilizer;

(f) Ice melt products;

(g) Pool chemicals;

(h) Pesticides or insecticides;
(i) Fuels, oil, lighter fluid, or solvents;
(j) Matches or lighters;
(k) Air freshener or aerosols;
(l) Personal grooming products including, but not limited to:
(i) Lotions, creams, or toothpaste;
(ii) Liquid, powder, or cream personal hygiene products;
(iii) Shampoo, conditioners, hair gels or hair sprays;
(iv) Makeup or cosmetics;
(m) Dish soap, dishwasher soap or additives;
(n) Tobacco products, including cigarette/cigar butts and contents of ashtrays; and
(o) Alcohol, opened or unopened.
(3) The licensee and program staff must:
(a) Keep a material safety data sheet on-site for all chemicals used or present on-site;
(b) Store pesticides in their original container; and
(c) Store cleaning and sanitizing chemicals in their original containers unless they are diluted, in which case the licensee may store them in an alternate container labeled to indicate the container's contents.

ENVIRONMENTS

NEW SECTION

WAC 170-297-4200 Toys, equipment, and recalled items. (1) The licensee must maintain equipment, toys or other items in the child care in good and safe working condition.
(2) The licensee must remove a recalled item as soon as the licensee becomes aware that the item used in the licensee's child care operation has been recalled.

NEW SECTION

WAC 170-297-4225 Indoor licensed space—Minimum space. (1) The indoor licensed space must have thirty-five square feet per child for the maximum number of children stated on the license, measured to include only the space intended for use by children in care.
(2) Indoor space that is not counted in the minimum square footage requirement includes:
(a) Unlicensed space that is made inaccessible to children in care;
(b) Hallway space that leads to an exit; and
(c) Bathrooms.

NEW SECTION

WAC 170-297-4250 Indoor temperature. The indoor temperature must be no less than sixty-five degrees Fahrenheit and no higher than seventy-five degrees Fahrenheit during the winter or eighty-two degrees Fahrenheit during the summer.

NEW SECTION

WAC 170-297-4275 Fans, air conditioning or cross ventilation. A fan, air conditioner or cross ventilation must be used in licensed space when the inside temperature exceeds eighty-two degrees Fahrenheit. Fans and air conditioners must be kept inaccessible to the children, or a protective barrier must be used to prevent children from accessing fan blades.

NEW SECTION

WAC 170-297-4300 Window coverings. (1) Window coverings with pull cords or inner cords capable of forming a loop are prohibited as provided by RCW 43.215.360.
(2) Window coverings may be allowed that have been manufactured or altered to eliminate the formation of a loop.
(3) A window covering must not be secured to the frame of a window or door used as an emergency exit in any way that would prevent the window or door from opening easily.

NEW SECTION

WAC 170-297-4350 Electrical outlets, cords and power strips. (1) The licensee must use electrical outlets that are in good working order without exposed wires or broken covers.
(2) Interior outlets near sinks, tubs or toilets must be:
(a) Tamper-resistant ground fault circuit interrupter (GFCI) type; or
(b) Made inaccessible to the children.
(3) Electrical cords must be:
(a) Secured to prevent a tripping hazard;
(b) In good working order, not torn or frayed and without any exposed wire; and
(c) Plugged directly into an outlet, or a surge protector that is plugged directly into an outlet.
(4) Power strips with a surge protector may be used and must be made inaccessible to the children.
(5) Extension cords may be used only for a brief or temporary purpose and must be plugged into an outlet or into a surge protected power strip.

NEW SECTION

WAC 170-297-4360 Area lighting. All areas of the facility must have natural or artificial lighting that provides adequate illumination for facility activities.

NEW SECTION

WAC 170-297-4375 Lighting safety. (1) Ceiling-mounted light fixtures in licensed space accessible to children must have one of the following:
(a) Shatter-resistant covers; or
(b) Shatter-resistant light bulbs.
(2) The licensee must not:
(a) Allow bare light bulbs in any play space;
(b) Use lights or light fixtures indoors that are intended or recommended for outdoor use; or
(c) Use halogen lamps in any area accessible to children during operating hours.

NEW SECTION

WAC 170-297-4475 Emergency exit pathways. Pathways to all emergency exits must be kept free from clutter and obstructions. Emergency exits and pathways to emergency exits are licensed space.

NEW SECTION

WAC 170-297-4550 Windows. (1) When a protective guard is used on any window it must not block outdoor light from entering the child care or prevent air flow into the child care.

(2) Where a window is used as an emergency exit window, the window and guards, if provided, must be equipped to enable staff to release the guard and open the window fully when emergency exit is required.

NEW SECTION

WAC 170-297-4625 Toileting facility. A toileting facility must be available for use by the children.

(1) The toileting facility must have at minimum:

(a) One working flush-type toilet for every thirty children based on the licensed capacity. One-third of the toilets may be replaced by a urinal;

(b) Privacy for toileting for children of the opposite sex; and

(c) A mounted toilet paper dispenser and toilet paper for each toilet.

(2) The toileting facility must be ventilated by the use of a window that can be opened or an exhaust fan.

(3) A diaper changing area must be provided to meet the diapering needs of the children when applicable.

NEW SECTION

WAC 170-297-4635 Handwashing sinks. (1) Handwashing facilities must be located in or immediately outside of:

(a) Rooms used for toileting; and

(b) Areas used for food preparation.

(2) Soap and warm water must be provided at each handwashing sink, as well as:

(a) Disposable paper towels; or

(b) A heated-air hand-drying device with heat guards to prevent contact with surfaces that get hotter than one hundred twenty degrees Fahrenheit.

(3) The handwashing procedures must be posted at each handwashing sink.

NEW SECTION

WAC 170-297-4650 Bathroom floors. Bathrooms and other rooms subject to moisture must have flooring that is washable and moisture resistant. The floor must be cleaned and disinfected as provided in WAC 170-297-0010 daily or more often if needed.

NEW SECTION

WAC 170-297-4700 Water temperature. Water must be kept at a temperature of at least sixty degrees Fahrenheit and not more than one hundred twenty degrees Fahrenheit.

NEW SECTION

WAC 170-297-4725 Guns and other weapons. Firearms or other weapons are prohibited on the premises.

NEW SECTION

WAC 170-297-4750 Storage for each child's belongings. Separate storage areas for each child's belongings must be provided.

PETS AND OTHER ANIMALS

NEW SECTION

WAC 170-297-4800 Pet and other animal policy. A program that has a pet or pets must:

(1) Inform children's parents and guardians that the child care program has a pet; and

(2) Have a pet policy in the parent handbook that includes:

(a) How children will have access to pets;

(b) How children will be kept safe around pets;

(c) Pet immunizations; and

(d) Handling of pet waste.

NEW SECTION

WAC 170-297-4850 Pet and other animal health and safety. (1) Pets that have contact with children must:

(a) Have current immunizations for communicable diseases;

(b) Show no signs of disease, worms or parasites; and

(c) Have veterinarian documentation that the pet is nonaggressive.

(2) Children and program staff must wash their hands as required under WAC 170-297-3650 before and after handling or feeding pets or handling pet toys or equipment.

(3) Programs that are on school district property must follow the school district's policy for pets.

NEW SECTION

WAC 170-297-4875 Pets and other animals interacting with children. (1) The licensee or program staff must not have reptiles, amphibians, chickens, or ducks on-site due to the risk of Salmonella.

(2) When community activities or special events include reptiles, amphibians, chickens, or ducks, the licensee or program staff must directly supervise the children when interacting with these animals to reduce the risk of Salmonella.

Children and program staff must wash their hands before and after interacting with these animals.

NEW SECTION

WAC 170-297-4900 Pet and other animal wastes. (1) All animal wastes and litter must be disposed of immediately.

(2) Animal waste must be disposed of in a way that children cannot come in contact with the material.

(3) Animal waste, including fish tank water, must not be disposed of in sinks used by children or staff, except custodial sinks. If custodial sinks are used to dispose of animal waste, the sink area must be washed, rinsed and disinfected after disposal.

OUTDOOR ENVIRONMENT

NEW SECTION

WAC 170-297-4925 Licensed outdoor space. (1) The licensee must provide a safe outdoor play area on the premises.

(a) The outdoor play space must contain seventy-five square feet of usable space per child for the number of children stated on the license.

(b) If the premises does not have seventy-five square feet of available outdoor space per child, the licensee may provide an alternative plan, approved by the department, to meet the requirement for all children in care to have daily opportunities for active outdoor play.

(2) The licensed outdoor play space must be enclosed within a fence, barrier, or identified boundary. When a fence has slats, openings between the slats must be no wider than three and one-half inches.

(3) When the licensed outdoor play space is not adjacent to the licensed facility the licensee must:

(a) Identify and use a safe route to and from the licensed outdoor space that is approved by the department; and

(b) Supervise the children at all times when passing between the licensed outdoor space and the facility.

(4) The licensee must provide a written plan, approved by the department, to make roadways and other dangers adjacent to the licensed outdoor play space inaccessible to children.

(5) The department may approve all or part of the outdoor space for use by a child care program that is on school district property and has been inspected and maintained by the school district using the Consumer Product Safety Commission's *Public Playground Safety Handbook*.

NEW SECTION

WAC 170-297-4950 Playground equipment—Ground cover—Fall zones. (1) The licensee must not place climbing play equipment on concrete, asphalt, packed soil, lumber, or similar hard surfaces when being used by children.

(2) The ground under swings and play equipment intended to be climbed must be covered by a shock absorbing material. Grass alone is not an acceptable ground cover material under swings or play equipment intended to be climbed. Acceptable ground cover includes:

(a) Pea gravel at least nine inches deep;

(b) Playground wood chips at least nine inches deep;

(c) Shredded recycled rubber at least six inches deep; or

(d) Other department approved material.

(3) A six-foot fall zone must surround all equipment that has a platform over forty-eight inches tall that is intended to be climbed.

(4) The fall zone area must extend at least six feet beyond the perimeter of the play equipment. For swings, the fall zone must be the distance to the front and rear of the swing set equal to or greater than twice the height of the top bar from which the swing is suspended.

(5) Swing sets must be positioned further away from structures to the front and rear of the swing set. The distance to the front and rear of the swing set from any playground equipment or other structure must be a distance equal to or greater than twice the height of the top bar from which the swing is suspended.

(6) The department may approve all or part of a playground for use by a child care program that is on school district property and has been inspected and maintained by the school district using the Consumer Product Safety Commission's *Public Playground Safety Handbook*.

NEW SECTION

WAC 170-297-5000 Play equipment. The licensee must have play equipment that is developmentally appropriate and maintained in a safe working condition. The licensee must inspect play equipment at least weekly for injury hazards, broken parts, or damage. Unsafe equipment must be repaired immediately or must be made inaccessible to children until repairs are made.

NEW SECTION

WAC 170-297-5050 Bouncing equipment prohibited. The licensee must not use or allow the use of bouncing equipment including, but not limited to, trampolines, rebounders, and inflatable structures.

NEW SECTION

WAC 170-297-5100 Outdoor supervision. (1) Program staff must be within sight or hearing range of the children when in the licensed outdoor space and be available and able to respond if the need arises for the safety of the children.

(2) The required staff-to-child ratio must be maintained when the children are in the licensed outdoor space.

NEW SECTION

WAC 170-297-5125 Outdoor areas and daily physical activities. (1) The licensed program must have an outdoor play area that promotes a variety of age and developmentally appropriate active play for the children in care.

(2) The program staff must provide outdoor activities at least twenty minutes for every three hours of care unless conditions pose a health and safety risk to the children.

(3) Conditions that may pose a health and safety risk include, but are not limited to:

(a) Heat in excess of one hundred degrees Fahrenheit;

(b) Cold less than twenty degrees Fahrenheit;

(c) Lightning storm, tornado, hurricane, or flooding, if there is immediate or likely danger to the children;

(d) Earthquake;

(e) Air quality emergency ordered by a local or state air quality authority or public health authority;

(f) Lockdown order by a public safety authority; or

(g) Other similar incidents.

WATER SAFETY

NEW SECTION

WAC 170-297-5150 Water safety and activity. (1) When the children in care are involved in swimming or other water activities, the program staff must maintain the following water safety precautions:

(a) A minimum staff-to-child ratio of 1:10 must be maintained;

(b) A certified lifeguard, with a nationally recognized certification, must be present at all times. Lifeguards are not counted in the staff-to-child ratio;

(2) Swimming pools and natural bodies of water must be inaccessible to the children when not in use; and

(3) Program staff must not allow the children use of or access to a hot tub, spa tank, or whirlpool.

NEW SECTION

WAC 170-297-5175 Wading pools—Defined—Supervision. (1) A wading pool means an enclosed pool with water depth of two feet or less measured without children in the pool that can be emptied and moved.

(2) When a wading pool is used by the children, the licensee or program staff must:

(a) Directly supervise the children;

(b) Obtain written permission from each child's parent or guardian to allow the child to use a wading pool;

(c) Maintain staff-to-child ratios when children are in a wading pool; and

(d) Daily, empty, clean, and sanitize the pool as provided in WAC 170-297-0010. When the pool is soiled with urine, feces, vomit, or blood, the licensee or program staff must immediately empty, clean, and sanitize.

NEW SECTION

WAC 170-297-5200 Swimming pools defined—Barriers and supervision. (1) A swimming pool is a pool that has a water depth greater than two feet.

(2) When there is a swimming pool on the premises the licensee must provide:

(a) A door alarm or bell on each door opening to the pool area to warn staff when the door is opened;

(b) A five foot high fence that blocks access to the swimming pool. When the fence has slats the openings between slats must not be wider than three and one-half inches wide;

(c) Gates with a self-latching device at entrance and exit points to the swimming pool and lock each gate; and

(d) An unlocking device that is inaccessible to children but readily available to the licensee or staff.

(3) The licensee must maintain the swimming pool according to manufacturer's specifications, including cleaning and sanitizing.

(4) When the swimming pool on the premises is used by the children:

(a) The licensee must obtain written permission from the parent or guardian of each child using the swimming pool;

(b) There must be one person present at the swimming pool at all times who is a certified lifeguard, with a nationally recognized certification; and

(c) The licensee must provide one additional staff person more than the required staff-to-child ratio provided in WAC 170-297-5700 to help supervise the children.

NEW SECTION

WAC 170-297-5225 Bodies of water or water hazards on the licensed premises. (1)(a) As used in WAC 170-297-5150 through 170-297-5250, a "body of water" is a natural area or man-made area or device that contains or holds more than two inches of water.

(b) "Body of water" does not include a wading pool as defined in WAC 170-297-5175, a water activity table, small bird baths or rain puddles with a water depth of two inches or less.

(2) When children are in care the licensee must:

(a) Make any body of water in the licensed space inaccessible with a physical barrier (not to include a hedge or vegetation barrier) or fence that is at least five feet tall. When a fence has slats or open grids, openings must not be wider than three and one-half inches; and

(b) Directly supervise or have a primary staff person directly supervise children, with the staff-to-child ratios observed, whenever children play in any area with a body of water.

NEW SECTION

WAC 170-297-5250 Bodies of water outside and near licensed space. (1) The following bodies of water must be made inaccessible to children in care, and the child care program must have a written safety plan approved by the department for:

(a) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools or similar bodies of water located outside and near (in close proximity to) the licensed space, regardless of whether the body of water is on or off the premises; or

(b) Any uncovered well, septic tank, below grade storage tank; farm manure pond or similar hazards that are on the premises.

(2) Unless attending a swimming or water play activity, when outside the licensed premises the licensee or program staff must keep children from having access to bodies of water that pose a drowning hazard.

SUPERVISION, CAPACITY AND RATIO

NEW SECTION

WAC 170-297-5600 Staff-to-child ratio. (1) The licensee must provide qualified staff to meet the staffing requirements and ratios described in WAC 170-297-5700 at all times during operating hours, including off-site trips or when transporting children in care.

(2) The licensee must provide additional staff as described in WAC 170-297-5150 through 170-297-5250 when children are participating in water activities or near water.

(3) At minimum, a 1:15 staff-to-child ratio must be maintained at all times.

NEW SECTION

WAC 170-297-5625 Capacity. (1) The child care program must not exceed the total number or ages of children in attendance stated on the child care license.

(2) All children in care through twelve years of age in attendance on the premises, attending an off-site field trip or activity, or being transported by the licensee or program staff are counted in capacity.

(3) All children within the age range on the license count in ratio, including children of program staff, or visiting children who are not accompanied by an adult.

(4) The licensee must receive department approval to care for a child with special needs as documented in WAC 170-297-0050 if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in ratio.

(5) If an individual child with special needs requires individualized supervision, a program staff person providing individualized supervision for that child does not count in the staff-to-child ratio for the other children in care.

NEW SECTION

WAC 170-297-5725 Groups. (1) The program must provide clearly defined licensed space for each group of children.

(2) A 1:15 staff-to-child ratio must be maintained at all times.

(3) Group size must not exceed thirty children.

(4) Group size may exceed thirty only for brief periods of time not to exceed fifteen minutes, or for special events such as assemblies or performances.

(5) Qualified staff must supervise each group.

(6) The total number of children in all groups must not exceed the licensed capacity of the space.

LICENSEE RESPONSIBILITIES

NEW SECTION

WAC 170-297-5750 Supervising children. (1) The licensee must provide required staffing levels, staff-to-child ratios and supervision for the number of children in attendance.

(2) The licensee or program staff must be aware of what the children are doing at all times and be available and able to promptly assist or redirect activities when necessary.

(3) The licensee and program staff must consider the following when deciding how closely to supervise the children:

(a) Ages of the children;

(b) Individual differences and abilities;

(c) Layout of the indoor and outdoor licensed space and play area;

(d) The risk associated with the activities children are engaged in; and

(e) Any nearby hazards including those in the licensed or unlicensed space.

(4) An electronic communication or surveillance device does not replace direct supervision of the children.

(5) The required staff-to-child ratio must be maintained when the children are in the licensed outdoor space.

(6) The licensee or program staff must be within sight or hearing range of children when in the licensed indoor and outdoor space and be available and able to respond if the need arises for the safety of the children, including when:

(a) Moving from indoors to outdoors;

(b) Moving from room to room; and

(c) The child uses the restroom.

(7) When only one staff person is present, a second qualified staff person must be on-site, able, and readily available to assist in an emergency.

(8) See:

(a) WAC 170-297-5150 for additional supervision requirements when children are engaged in an off-site water play or swimming activity;

(b) WAC 170-297-5175 for additional supervision requirements when children are using a wading pool; and

(c) WAC 170-297-5200 for additional supervision requirements when children are using a swimming pool.

NEW SECTION

WAC 170-297-5800 Orientation for staff. (1) The licensee or designee must provide a program orientation to all new staff on:

(a) Licensing standards in this chapter;

(b) The program's policies and procedures;

(c) Goals and philosophy of the program;

(d) Planned daily activities and routines;

(e) Age-appropriate child guidance and behavior management methods;

(f) Child abuse and neglect prevention, detection, and reporting policies and procedures;

(g) Special health and developmental needs of individual children if applicable;

(h) Fire prevention, emergency preparedness and safety procedures; and

(i) Personnel policies.

(2) The licensee or designee must document when the training occurred and identify the staff that received the training.

NURTURE AND GUIDANCE

NEW SECTION

WAC 170-297-6000 Interactions with children. The licensee and program staff must:

(1) Actively seek out meaningful conversations with children and talk about events of importance to the child;

(2) Be available and responsive to children and interact on the child's level, encouraging them to ask questions, share experiences, ideas and feelings;

(3) Encourage children to evaluate a problem and form a resolution rather than impose an adult solution; help children to develop mediation and negotiation skills to solve problems;

(4) Foster creativity and independence;

(5) Build on children's strengths while allowing for mistakes;

(6) Treat equally all children in care regardless of race, religion, culture, sex, family structure and ability;

(7) Demonstrate positive interactions with children and other adults when children are present;

(8) Be in frequent verbal communication with children in a positive, reinforcing, cheerful and soothing way;

(9) Treat each child with consideration and respect;

(10) Appropriately touch and smile at children;

(11) Speak to the children at their eye level when possible and appropriate;

(12) Respond to and investigate cries or other signs of distress immediately;

(13) Perform age or developmentally appropriate nurturing activities that:

(a) Take into consideration the parent's own nurturing practices;

(b) Promote each child's learning self-help and social skills; and

(c) Stimulate the child's development; and

(14) Provide each child opportunities for vocal expression; adult voices must not always dominate the overall sound of the group.

NEW SECTION

WAC 170-297-6025 Prohibited interactions. In the presence of the children in care the licensee and program staff must not or allow others to:

(1) Use profanity, obscene language, "put downs," cultural, or racial slurs;

(2) Have angry or hostile interactions;

(3) Use name calling or make derogatory, shaming, or humiliating remarks; or

(4) Use or threaten to use any form of physical harm or inappropriate discipline, such as, but not limited to:

(a) Spanking children;

(b) Biting, jerking, kicking, hitting, or shaking;

(c) Pulling hair;

(d) Pushing, shoving, or throwing a child; and

(e) Inflicting pain or humiliation as a punishment.

NEW SECTION

WAC 170-297-6050 Guidance and discipline. The licensee and program staff must use consistent, fair, and positive guidance and discipline methods. These methods must be appropriate to the child's developmental level, abilities, culture, and related to the child's behavior.

(1) Only the licensee or a program staff person trained in the child care program's expected standards may discipline a child in care.

(2) The licensee or designee is responsible for developing a written policy including:

(a) Setting standards for guidance and discipline;

(b) Communicating to parents, guardians, and children in care what the policy is;

(c) Training program staff and volunteers in the standards of guidance and discipline policy; and

(d) Any disciplinary actions by the licensee or program staff that occur during child care hours.

NEW SECTION

WAC 170-297-6075 Positive options for discipline. The licensee and program staff must use positive guidance methods. The guidance methods may include any of the following:

(1) Redirecting;

(2) Planning ahead to prevent problems;

(3) Encouraging appropriate behavior;

(4) Explaining consistent, clear rules;

(5) Allowing children to be involved in solving problems; and

(6) Explaining to the child the reasonable and age appropriate natural and logical consequences related to the child's behaviors.

NEW SECTION

WAC 170-297-6100 Separating a child from the group. (1) The licensee or program staff may separate a child from other children as a form of discipline only long enough to allow the child to regain control of him or herself. The child must remain under the direct supervision of the licensee or program staff person.

(2) The licensee and program staff must:

(a) Take into account the child's developmental level and ability to understand the consequences of his or her actions;

(b) Communicate to the child the reason for being separated from the other children;

(c) Not discipline any child by separating the child from the group and placing himself or her in a closet, a bathroom, a locked room, outside or in unlicensed space; or

(d) Not use confining space or equipment for the purpose of punishment or restricting a child's movements.

NEW SECTION

WAC 170-297-6125 Preventing harmful or aggressive acts. The licensee and program staff must:

(1) Take steps to protect children from the harmful acts of other children;

(2) Immediately intervene when a child becomes physically aggressive; and

(3) Document serious behavior incidents and develop, as needed, individual written behavior plans with parent input.

NEW SECTION

WAC 170-297-6150 Prohibited actions. The licensee and program staff must not:

(1) Restrict a child's breathing;

(2) Deprive a child of:

(a) Sleep, food, water, clothing or shelter;

(b) Needed first aid; or

(c) Required or emergency medical or dental care.

(3) Interfere with a child's ability to take care of his or her own hygiene and toileting needs;

(4) Withhold hygiene care, toileting care or diaper changing to any child unable to provide such care for himself or herself; or

(5) Withhold active play as punishment.

NEW SECTION

WAC 170-297-6175 Using alternate methods before using physical restraint. (1) Program staff must be trained on alternate methods to use before using physical restraint.

(2) Before using physical restraint, the licensee and program staff must first use other methods described in WAC 170-297-6075 to redirect or de-escalate a situation.

NEW SECTION

WAC 170-297-6200 Physical restraint—Prohibited uses or methods. The licensee and program staff must not use:

(1) Physical restraint as a form of punishment or discipline;

(2) Mechanical restraints including, but not limited to, handcuffs and belt restraints;

(3) Locked time-out or isolation space;

(4) Bonds, ties, tape, or straps to restrain a child; or

(5) Physical restraint techniques that restrict breathing or inflict pain. These include, but are not limited to:

(a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;

(b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;

(c) Arm twisting;

(d) Hair holds;

(e) Choking or putting arms around the throat; or

(f) Chemical restraint such as mace or pepper spray.

NEW SECTION

WAC 170-297-6225 Physical restraint—Holding method allowed. When a child's behavior makes it necessary for his or her own or another's protection, the licensee or program staff may restrain the child by holding the child as gently as possible. A child must not be physically restrained longer than necessary to control the situation.

NEW SECTION

WAC 170-297-6250 Notice and documenting use of physical restraint. If physical restraint is used the licensee or program staff must:

(1) Report use of physical restraint to the child's parent or guardian and the department as required under WAC 170-297-2250;

(2) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(3) Document the incident in the child's file; and

(4) Develop a safety plan with the licensor if required by the department.

NEW SECTION

WAC 170-297-6275 Abuse and neglect—Protection and training. (1) The licensee and program staff must:

(a) Protect children in care from all forms of child abuse or neglect as defined in RCW 26.44.020; and

(b) Report suspected or actual abuse or neglect as required under RCW 26.44.030 to DSHS children's administration intake (child protective services) or law enforcement.

(2) The licensee or designee must provide training for program staff and volunteers on:

(a) Prevention of child abuse and neglect as defined in RCW 26.44.020; and

(b) Mandatory reporting requirements under RCW 26.44.030.

PROGRAM

NEW SECTION

WAC 170-297-6400 Off-site activities—Parent or guardian permission. (1) Program staff must have written permission from the parent or guardian prior to the child engaging in off-site activities. The written permission must be kept in the child's file.

(2) Program staff must have a separate permission for activities that occur less often than once per calendar month.

(3) For scheduled or unscheduled off-site activities that may occur more than once a month, the licensee must:

(a) Have a signed parent or guardian permission on file for each child; and

(b) Inform parents and guardians about how to contact program staff when children are on an off-site activity.

NEW SECTION

WAC 170-297-6425 Off-site activity supervision. When on an off-site activity, the program staff responsible for the care of the children must at all times provide direct sight and sound supervision and be able to promptly assist or redirect the children's activities.

NEW SECTION

WAC 170-297-6450 Off-site activity—Emergency information and supplies. When on an off-site activity, program staff must have available:

(1) An emergency consent form for each child that includes:

(a) Emergency contact information;

(b) Permission to obtain medical treatment for the child in the event of a medical emergency;

(c) A list of the child's allergies, if applicable; and

(d) Permission to administer medications, if applicable;

(2) Emergency supplies, including:

(a) A first-aid kit; and

(b) Each child's required medication or emergency medicine, if applicable.

NEW SECTION

WAC 170-297-6475 Transportation. When transporting children in care, the licensee, staff, and volunteers must:

(1) Follow RCW 46.61.687 and other applicable law regarding child restraints and car seats;

(2) Carry in the vehicle all items required under WAC 170-297-6450 and a current copy of each child's completed enrollment form;

(3) Maintain the vehicle in safe operating condition with vehicle maintenance record available on-site;

(4) Have a valid driver's license to operate the type of vehicle being driven, if the licensee, staff, or volunteer is driving;

(5) Have a current insurance policy that covers the driver, the vehicle, and all occupants;

(6) Take attendance each time children are getting in or getting out of the vehicle;

(7) Never leave children unattended in the vehicle; and

(8) Maintain required staff-to-child ratio and capacity.

NEW SECTION

WAC 170-297-6500 Using public transportation. The licensee or program staff may transport children using public transportation, provided that children are supervised at all times and required staff-to-child ratios are maintained. The licensee and program staff must not allow or send children on public transportation unsupervised.

NEW SECTION

WAC 170-297-6550 Typical daily schedule. (1) A typical daily schedule must be posted that includes program activities.

(2) The typical daily schedule must include:

(a) Hours of operation;

(b) Types of activities, including screen time;

(c) General timelines for activities;

(d) Routine transportation times, if applicable;

(e) Menus and meal service; and

(f) Outdoor times.

(3) Evidence of daily activities may be shared or demonstrated through:

(a) Display;

(b) Writing; or

(c) A checklist.

NEW SECTION

WAC 170-297-6575 Activities to promote child growth and development. (1) An activity program must be implemented that is designed to meet the developmental, cultural, and individual needs of the children in care. The activity program must contain a range of learning experiences for the children to:

(a) Gain self-esteem, self-awareness, conflict resolution, self-control, and decision-making abilities;

(b) Develop socially, emotionally, intellectually, and physically;

(c) Learn about nutrition, health, and personal safety;

(d) Experiment, create, and explore; and

(e) Recognize and support positive cultural and individual identities.

(2) The activity program schedule must include activities that offer a variety of options including a balance between:

(a) Child-initiated and staff-initiated activities;

(b) Free choice and organized events;

(c) Individual and group activities; and

(d) Quiet and active experiences.

(3) The activity program schedule must include activities that provide the children daily opportunities for small and large muscle activities and outdoor play.

(4) The program schedule must include the opportunity for the children to participate in moderate to vigorous physical activity on an average of thirty minutes for every three hours of care.

(5) Program staff should encourage learning in school.

(6) The child care program must operate under a regular schedule of activities with allowances for special events when applicable.

(7) Child movements must be managed from one planned activity or care area to another to achieve smooth, unregimented transitions by:

(a) Establishing familiar routines;

(b) Contributing to learning experiences; and

(c) Maintaining staff-to-child ratio and group size guidelines.

NEW SECTION

WAC 170-297-6600 Equipment and play materials. (1) Safe equipment and play materials must be provided that are:

(a) Washable and clean; and

(b) Nonpoisonous or free of toxins.

(2) Materials and equipment must accommodate children with special needs.

(3) Basic school supplies and program staff support must be provided for children to work on their homework.

NEW SECTION

WAC 170-297-6625 Art materials. All prepackaged art materials used in the child care must be labeled "nontoxic"

and as conforming to or meeting "ASTM D-4236." This does not apply to food items used as art materials, bulk paper, or items from the natural environment.

NEW SECTION

WAC 170-297-6650 Screen time. When the child care program provides screen time for children in care, the screen time must:

(1) Be educational, developmentally and age appropriate;

(2) Have child-appropriate content; and

(3) Not have violent or adult content.

NEW SECTION

WAC 170-297-6675 Screen time—Limitations. The licensee or staff must:

(1) Limit screen time for any child to no more than one hour per week, except when children are completing homework assignments;

(2) Not require children to participate in screen time;

(3) Provide alternative activities to screen time; and

(4) Place the television screen at least three feet from the children.

NEW SECTION

WAC 170-297-6775 Diversity. The licensee must:

(1) Provide an environment that reflects each child's daily life, family culture and language, and the diversity in society;

(2) Describe or demonstrate to the licensor, or have a written plan for how:

(a) The licensee will discuss with parents how the child care reflects that child's daily life and family's culture or language; and

(b) The child care environment reflects the diversity in society.

FOOD SERVICE AND NUTRITION

NEW SECTION

WAC 170-297-7500 Food and milk must meet USDA guidelines. (1) Meals and snack foods must be provided to children in care according to the most current edition of the U.S. Department of Agriculture (USDA) child and adult care food program (CACFP) charts for the ages of children in care.

(2) Milk must be provided to children in care according to the most current edition of the USDA CACFP charts for the ages of children in care.

NEW SECTION

WAC 170-297-7515 Menus and dietary restrictions. (1) Menus must be posted in the licensed space in a place where parents and staff can easily view them. Menus must include:

(a) Food type and portion sizes planned and served;

(b) Two weeks or more of food variety before repeating menus;

(c) Dates; and

(d) Any changes that are made posted on the menu.

(2) When a child has a food allergy or special dietary requirement due to a health condition program staff must:

(a) Obtain written instructions from the child's parent or guardian and health care provider identifying foods to avoid and appropriate alternatives; and

(b) Post the child's dietary restrictions where food is prepared and served.

NEW SECTION

WAC 170-297-7525 Parent or guardian-provided food. (1) A parent or guardian may provide alternative food for their child if a written food plan is completed and signed by the parent or guardian and the licensee or program staff.

(2) A written food plan may include accommodations for:

(a) The child's medical needs;

(b) Special diets;

(c) Religious or cultural preference; or

(d) Family preference.

(3) If food provided by the parent or guardian does not meet the USDA CACFP meal pattern it must be supplemented by the program.

NEW SECTION

WAC 170-297-7530 Food sources. (1) Food sources that are not approved include:

(a) Leftover food that was previously served from outside the site;

(b) Home canned food due to the risk of botulism poisoning;

(c) Donated food from restaurants or caterers that was previously served;

(d) Game meat that has not been inspected by the USDA; and

(e) Meat, fish, poultry or milk that is from a source not inspected for sale.

(2) All food must be prepared on-site unless it is provided by a:

(a) Licensed satellite kitchen, catering kitchen or other source licensed by the local health jurisdiction; or

(b) Parent or guardian as provided in WAC 170-297-7525.

NEW SECTION

WAC 170-297-7575 Drinking water. (1) A safe supply of drinking water must always be available to each child and must be served in a sanitary manner.

(2) Drinking water may not be obtained from any handwashing sink.

NEW SECTION

WAC 170-297-7580 Drinking fountains. (1) Inclined jet-type drinking fountains may be used.

(2) Bubble-type drinking fountains and drinking fountains attached to or part of sinks used for any purpose other than the drinking fountain must not be used.

(3) Drinking fountains must be cleaned and sanitized, as provided in WAC 170-297-0010, on a daily basis or more often as needed.

NEW SECTION

WAC 170-297-7625 Meal and snack schedule. Meals and snacks must be served based on the following:

(1) Breakfast must be made available either by the program or the school;

(2) A snack must be provided for children in care for one to three hours after school; and

(3) When all-day care is provided, meals, including lunch, and snacks must be served at intervals not less than two hours and not more than three and one-half hours apart.

NEW SECTION

WAC 170-297-7650 Serving foods. (1) The licensee or program staff may:

(a) Serve each child individually; or

(b) Serve family style in serving containers that allow each child the opportunity to serve themselves.

(2) The licensee or program staff must:

(a) Closely supervise all children when eating;

(b) Not force or shame a child to eat or try any food;

(c) Not punish a child for refusing to try or eat foods;

(d) Serve meals in a safe and sanitary manner;

(e) Be respectful of each child's cultural food practices; and

(f) Sit with children during meals when possible.

NEW SECTION

WAC 170-297-7675 Food worker card. (1) Each staff person preparing or handling food must obtain and maintain a current Washington state department of health food worker card prior to handling or preparing food.

(2) At least one individual with a food worker card must be on-site during hours when food is provided.

(3) The licensee or designee must provide orientation and ongoing training as needed for all staff involved in food preparation and service.

(4) The licensee must keep a copy of each individual's food worker card on file.

NEW SECTION

WAC 170-297-7680 Safe food handling. (1) Program staff must follow the safe preparation, cooking, and serving guidelines in the current edition of the food workers manual prepared by the state department of health.

(a) Food must be served at temperatures of not less than one hundred thirty-five degrees Fahrenheit for hot foods and not more than forty-one degrees Fahrenheit for cold foods.

(b) All opened moist foods that have not been served must be covered, dated, and maintained at a temperature of forty-one degrees Fahrenheit or lower in the refrigerator or frozen in the freezer.

(c) Raw animal foods must be fully cooked to heat all parts of the food to a temperature and for a time of:

(i) One hundred forty-five degrees Fahrenheit or above for fifteen seconds for fish and meat;

(ii) One hundred sixty degrees Fahrenheit for fifteen seconds for chopped or ground fish, chopped or ground meat or raw eggs; or

(iii) One hundred sixty-five degrees Fahrenheit or above for fifteen seconds for poultry or stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish meat or poultry.

(d) Potentially hazardous cooked foods must be cooled in an uncovered container, protected from cross contamination, and in a shallow layer of three inches or less in cooling equipment maintained at an ambient temperature of forty-one degrees Fahrenheit or less.

(2) Program staff must:

(a) Wash their hands prior to preparing food and after handling raw meats, poultry, or fish; and

(b) Not prepare food when ill with vomiting, diarrhea or infectious skin sores that cannot be covered.

(3) Previously prepared food may be served if:

(a) The food was not previously served; and

(b) It was stored at the proper temperature for less than twenty-four hours after preparation.

(4) Leftover foods or opened foods in the refrigerator must be labeled with the date that they were opened or cooked.

(5) Each staff person preparing or handling food must maintain a current Washington state department of health food worker's permit.

NEW SECTION

WAC 170-297-7700 Washing dishes. The licensee or program staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher; or

(2) Handwashing method, by immersion in hot soapy water, rinsing, and sanitizing, as provided in WAC 170-297-0010, and air drying.

NEW SECTION

WAC 170-297-7725 Food containers and utensils. (1) Cookware containers must not be used to cook or reheat food in a microwave oven, unless the container is labeled by the manufacturer as "for microwave use," "microwave safe," or similar labeling.

(2) The licensee may use disposable serving containers, dishes and utensils that are sturdy, used only once and thrown away after use.

(3) The licensee must keep sharp utensils and other utensils that may cause serious injury or a choking hazard inaccessible to children when the utensils are not in use.

NEW SECTION

WAC 170-297-7750 Food preparation area. (1) Program staff must clean and sanitize food preparation and eating surfaces before and after use. The food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor made of a material that is resistant to moisture.

(2) The following kitchen equipment must be available to cook and serve food:

(a) A range with a properly vented hood or exhaust fan; and

(b) A refrigerator and freezer, or a combination refrigerator/freezer.

(3) There must be a designated food preparation sink in the licensed facility. When the food preparation sink is used for other purposes during nonchild care hours, it must be thoroughly cleaned and sanitized, as provided in WAC 170-297-0010, prior to use and a colander must be used to prevent food items from coming in contact with the sink basin.

(4) There must be a handwashing sink accessible during food preparation. See WAC 170-297-4635.

(5) A calibrated and working food thermometer must be used to monitor food temperature. The thermometer must be either a metal stem-type thermometer or a digital thermometer.

NEW SECTION

WAC 170-297-7800 Food storage. (1) Food must be stored:

(a) In the original containers or in clean, labeled containers that are airtight and off the floor;

(b) In a manner that prevents contamination from other sources;

(c) In an area separate from toxic materials such as cleaning supplies, paint, or pesticides;

(d) With a date that is not past the manufacturer's expiration or freshness date; and

(e) In a refrigerator, cooler, or freezer if cold holding is required.

(2) Raw meat, poultry, or fish in the refrigerator must be stored below cooked or ready to eat foods.

(3) Foods not requiring refrigeration must be stored at least six inches above the floor in a clean dry storeroom, or in a closed cupboard or pantry.

(4) Dry bulk foods not in their original containers must be stored in containers with tight fitting covers. Containers must be labeled and dated.

NEW SECTION

WAC 170-297-7825 Satellite kitchens. (1) When a satellite kitchen or catering service is used to provide food to the child care program, the child care program must have on file a copy of the permit issued by the local health jurisdiction to the satellite kitchen or catering service.

(2) When the satellite kitchen or catering service does not remain on-site during the food service the child care program must develop a system to record the temperature of perishable food once it arrives from a satellite kitchen or a catering service. The system must include:

(a) The name and the temperature of the food;

(b) The date and time the temperature was checked; and

(c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) The child care program must have a written policy that describes:

(a) How food will be handled once it is on-site;

(b) What back-up system the program will use if the food does not arrive, not enough food arrives, or the food cannot be served; and

(c) How records will be stored on-site for six months.

ENFORCEMENT OF LICENSING STANDARDS

NEW SECTION

WAC 170-297-8000 Facility licensing compliance agreements. At the department's discretion, when a licensee is in violation of this chapter or chapter 43.215 RCW, a facility licensing compliance agreement may be issued in lieu of the department taking enforcement action.

(1) The facility licensing compliance agreement contains:

(a) A description of the violation and the rule or law that was violated;

(b) A statement from the licensee regarding the proposed plan to comply with the rule or law;

(c) The date the violation must be corrected;

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) Signature of the licensor and licensee.

(2) The licensee must return a copy of the completed facility license compliance agreement to the department by the date indicated when corrective action has been completed.

(3) The licensee may request a supervisory review regarding the violation of rules or laws identified on the facility license compliance agreement.

(4) A facility license compliance agreement is not subject to appeal under chapter 170-03 WAC.

NEW SECTION

WAC 170-297-8010 Nonreferral status. In addition to or in lieu of an enforcement action under this chapter, the department may place a child care facility on no referral status as provided in RCW 43.215.300(4).

NEW SECTION

WAC 170-297-8025 Time period for correcting a violation. The length of time the program has to make the corrections depends on:

(1) The seriousness of the violation;

(2) The potential threat to the health, safety and well-being of the children in care; and

(3) The number of times the program has violated rules in this chapter or requirements under chapter 43.215 RCW.

NEW SECTION

WAC 170-297-8050 Civil monetary penalties (fines). A civil monetary penalty (fine) may be imposed when the licensee or program staff violates a rule in this chapter or a requirement in chapter 43.215 RCW.

(1) A fine of two hundred fifty dollars per day may be imposed for each violation.

(2) The fine may be assessed and collected with interest for each day a violation occurs.

(3) A fine may be imposed in addition to other action taken against the license including denial, modification, probation, suspension, revocation, or discontinuation.

(4) At the department's discretion, the fine may be withdrawn or reduced if the child care program comes into compliance during the notification period in WAC 170-297-8075.

(5) When a fine is assessed the licensee has the right to a hearing under chapter 170-03 WAC. The fine notice will include information about the licensee's hearing rights and how to request a hearing.

NEW SECTION

WAC 170-297-8060 When fines are levied. The department may base a fine for violation of a rule under this chapter or a requirement in chapter 43.215 RCW, according to whether the licensee:

(1) Has allowed the existence of any condition that creates a serious safety and health risk;

(2) Or any staff person uses corporal punishment or humiliating methods of control or discipline;

(3) Or any staff person fails to provide the required supervision;

(4) Fails to provide required light, ventilation, sanitation, food, water, or heating;

(5) Provides care for more than the highest number of children permitted by the license at one time; or

(6) Repeatedly fails to follow the rules in this chapter or the requirements in chapter 43.215 RCW. As used in this section, "repeatedly" means a violation that has been the subject of a facility license compliance agreement that occurs more than once in a twelve-month time period.

NEW SECTION

WAC 170-297-8075 Fines—Payment period. A fine must be paid within twenty-eight calendar days after the licensee receives the notice unless:

(1) The department approves a payment plan requested by the licensee; or

(2) The licensee requests a hearing as provided in RCW 43.215.307(3).

NEW SECTION

WAC 170-297-8100 Notice of fine—Posting. The licensee must post the department letter notifying the licensee of a final notice of a civil penalty:

(1) Immediately upon receipt;

(2) In the licensed space where it is clearly visible to parents and guardians; and

(3) For two weeks or until the violation causing the fine is corrected, whichever is longer.

NEW SECTION

WAC 170-297-8125 Failure to pay a fine—Department action. If the licensee fails to pay a fine within twenty-eight calendar days after the fine assessment becomes final the department may suspend, revoke or not continue the license.

NEW SECTION

WAC 170-297-8150 Denial, suspension, revocation, modification or noncontinuation of a license. (1) A license may be denied, suspended, modified, revoked or not continued when the licensee fails to comply with the requirements in this chapter or any provisions of chapter 43.215 RCW.

(2) A license may be denied, suspended, modified or revoked when the licensee knowingly allows others to fail to comply with the requirements in this chapter or any provisions of chapter 43.215 RCW.

NEW SECTION

WAC 170-297-8175 Violations—Enforcement action. The department may deny, suspend, revoke, or not continue a license when:

(1) The licensee or program staff are unable to provide the required care for the children in a way that promotes their health, safety and well-being;

(2) The licensee or program staff person is disqualified under chapter 170-06 WAC (DEL background check rules);

(3) The licensee or program staff person has been found to have committed child abuse or child neglect;

(4) The licensee has been found to allow program staff or volunteers to commit child abuse or child neglect;

(5) The licensee or program staff person has a current charge or conviction for a disqualifying crime under WAC 170-06-0120;

(6) There is an allegation of child abuse or neglect against the licensee, staff, or volunteer;

(7) The licensee or program staff person fails to report to DSHS children's administration intake or law enforcement any instances of alleged child abuse or child neglect;

(8) The licensee tries to obtain or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(9) The licensee or a program staff person commits, permits or assists in an illegal act at the child care premises;

(10) The licensee or a program staff person uses illegal drugs or alcohol in excess, or abuses prescription drugs;

(11) The licensee knowingly allowed a program staff person or volunteer to make false statements on employment or background check application related to their suitability or competence to provide care;

(12) The licensee does not provide the required number of qualified program staff to care for the children in attendance;

(13) The licensee or program staff fails to provide the required level of supervision for the children in care;

(14) When there are more children than the maximum number stated on the license at any one time;

(15) The licensee or program staff refuses to allow department authorized staff access during child care operating hours to:

(a) Requested information;

(b) The licensed space;

(c) Child, staff, or program files; or

(d) Staff or children in care;

(16) The licensee is unable to manage the property, fiscal responsibilities or staff in the facility; or

(17) The licensee or program staff cares for children outside the ages stated on the license.

NEW SECTION

WAC 170-297-8225 Notice of license denial, suspension, revocation, or modification. (1) The department notifies the licensee of the denial, suspension, revocation, or modification of the license by sending a certified letter or by personal service.

(2) The letter contains information on what the licensee may do if the licensee disagrees with the decision to deny, suspend, revoke, or modify the license.

(3) The licensee has a right to appeal the denial, suspension, revocation or modification of the license.

(4) The department notice will include information on hearing rights and how to request a hearing.

NEW SECTION

WAC 170-297-8250 Probationary license. A probationary license may be issued to a licensee operating under a nonexpiring full license as part of a corrective action plan. The department refers the licensee for technical assistance as provided in RCW 43.215.290 prior to issuing a probationary license.

NEW SECTION

WAC 170-297-8275 Probationary license—Cause. A department decision to issue a probationary license must be based on the following:

(1) Negligent or intentional noncompliance with the licensing rules;

(2) A history of noncompliance with the licensing rules;

(3) Current noncompliance with the licensing rules; or

(4) Any other factors relevant to the specific situation and consistent with the intent or purpose of chapter 43.215 RCW.

NEW SECTION

WAC 170-297-8300 Issuing a probationary license. When the department issues a probationary license, the licensee must:

(1) Provide the parents and guardians of enrolled children notice of the probationary license in a department-approved format within five working days of the licensee receiving the probationary license;

(2) Provide documentation to the department that parents or guardians of enrolled children have been notified;

(3) Inform new parents or guardians of the probationary status before enrolling new children;

(4) Post documentation of the approved written probationary license as required by RCW 43.215.525; and

(5) Return the licensee's nonexpiring full license to the department.

NEW SECTION

WAC 170-297-8325 Refusing a FLCA or probationary license. (1) The licensee has the right to:

(a) Refuse or refuse to sign a facility licensing compliance agreement; or

(b) Refuse to agree to a probationary license.

(2) Refusing a facility license compliance agreement or probationary license may result in one of the following enforcement actions:

(a) Modification of the license;

(b) Noncontinuation of a nonexpiring full license;

(c) Suspension of the license; or

(d) Revocation of the license.

NEW SECTION

WAC 170-297-8350 Providing unlicensed care—Notice. (1) If the department determines that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing unlicensed child care;

(d) That if the individual wishes to obtain a license, within thirty calendar days from the date of the department's notice in this subsection (1) the individual must submit a written agreement, on a department form, stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(2) The department's written notice in subsection (1) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(3) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (1)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

NEW SECTION

WAC 170-297-8375 Unlicensed care—Fines and other penalties. A person providing unlicensed child care may be:

(1) Assessed a fine of two hundred fifty dollars a day for each day unlicensed child care is provided;

(2) Guilty of a misdemeanor; or

(3) Subject to an injunction.

NEW SECTION

WAC 170-297-8400 Hearing process. (1) Department notice of an enforcement action against the license includes information about the right to request an adjudicative proceeding (hearing) and how to request a hearing.

(2) The hearing process is governed by chapter 34.05 RCW, Administrative Procedure Act, applicable sections of chapter 43.215 RCW, Department of early learning, and chapter 170-03 WAC, DEL hearing rules.

WSR 12-23-065
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed November 19, 2012, 1:48 p.m., effective January 1, 2013]

Effective Date of Rule: January 1, 2013.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

Purpose: To establish a 2013 annual tariff for pilotage services in the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 12-19-068 on September 17, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 24, 2012.

Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 11-21-084, filed 10/18/11, effective 1/1/12)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours January 1, ((~~2012~~)) 2013, through 2400 hours December 31, ((~~2012~~)) 2013.

CLASSIFICATION	RATE
Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:	
Draft and Tonnage Charges:	
Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.	
Draft	$((~~96.79~~)) 100.66 per meter or $((~~29.49~~)) 30.68 per foot
Tonnage	$((~~0.277~~)) 0.288 per net registered ton
Minimum Net Registered Tonnage	$((~~970.00~~)) 1,009.00
Extra Vessel (in case of tow)	$((~~543.00~~)) 565.00

CLASSIFICATION	RATE

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged $((~~5,377.00~~)) 5,592.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.

Boarding Charge:	
Per each boarding/deboarding from a boat or helicopter	$1,000.00
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	$((~~676.00~~)) 703.00
Delays per hour	$((~~159.00~~)) 165.00
Cancellation charge (pilot only)	$((~~265.00~~)) 276.00
Cancellation charge (boat or helicopter only)	$((~~795.00~~)) 827.00

Two Pilots Required:

When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of $((~~676.00~~)) 703.00 and in addition, when a bridge is transited the bridge transit charge of $((~~291.00~~)) 303.00 shall apply.

Pension Charge:	
Charge per pilotage assignment, including cancellations	$((~~280.00~~)) 353.00
Travel Allowance:	
Transportation charge per assignment	$100.00

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid $931.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:	
Charge for each bridge transited	$((~~291.00~~)) 303.00
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	$((~~805.00~~)) 829.00

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

WSR 12-23-085

PERMANENT RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 20, 2012, 1:27 p.m., effective January 1, 2013]

Effective Date of Rule: January 1, 2013.

Purpose: This rule making will amend eight and repeal nine rules under chapter 296-31 WAC. The purpose is to be consistent with SSB 5691 (chapter 346, Laws of 2011). The amendments will include the removal of references to Title 51 RCW and WACs being repealed, explain the impacts of the new benefit maximum, add clarity, and correct references to the billing guidelines.

Chapter 296-33 WAC will be amended to improve quality of care and public health to victims. It will also increase the efficiency of staff time and will eliminate the uncertainty of employer/employee relationships between the program and care providers.

Citation of Existing Rules Affected by this Order: Repealing chapter 296-31 WAC; and amending chapters 296-31 and 296-33 WAC.

Statutory Authority for Adoption: Chapter 7.68 RCW.

Adopted under notice filed as WSR 12-16-066 on July 31, 2012.

A final cost-benefit analysis is available by contacting Maty Brimmer, P.O. Box 44520, Olympia, WA 98501, phone (360) 902-6706, fax (360) 902-5333, e-mail maty.brimmer@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, 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 9, Repealed 9.

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

Date Adopted: November 20, 2012.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 00-10-003, filed 4/20/00, effective 5/22/00)

WAC 296-31-012 What mental health treatment and services are not authorized? (1) The crime victims compensation program will not authorize services and treatment:

(a) Beyond the point that the accepted condition becomes fixed and stable (i.e., maintenance care);

(b) After ((~~the date a permanent partial disability award is made;~~

~~(c) After a client is placed on a permanent pension roll, except as allowed in RCW 51.36.010~~)) a client is determined to be permanently totally disabled and while receiving financial support for lost wages except if the treatment is deemed medically necessary for previously accepted condition(s);

(((~~d~~))) (c) When services are not considered proper and necessary. Services that are inappropriate to the accepted condition, which present hazards in excess of the expected benefit, are controversial, obsolete, or experimental are presumed not to be proper and necessary, and shall only be authorized on an individual case basis with written authorization for the service from the department; ((~~or~~))

(d) That are not considered to be evidence-based and curative treatment; or

(e) For any therapies which focus on the recovery of repressed memory or recovery of memory which focuses on memories of physically impossible acts, highly improbable acts for which verification should be available, but is not, or unverified memories of acts occurring prior to the age of two.

(2) We will not pay for services or treatment, including medications:

(a) On rejected claims;

EXCEPTION: We will pay for assessments or diagnostic services used as a basis for the department's decision.

(b) After the date a claim is closed.

EXCEPTION: Therapy for eligible survivors of victims of homicide can be provided on closed claims.

(c) After the maximum benefit has been reached.

AMENDATORY SECTION (Amending WSR 99-20-031, filed 9/29/99, effective 11/1/99)

WAC 296-31-016 What treatment or services require authorization from the crime victims compensation program? (1) The program must authorize the following mental health services and/or treatment:

(a) ((~~Treatment beyond thirty sessions for adults or forty sessions for children;~~

~~(b) Treatment beyond fifty sessions for adults or sixty sessions for children;~~

~~(c)~~)) Consultations beyond what are allowed in WAC 296-31-065;

(((~~d~~))) (b) Inpatient hospitalization;

(((~~e~~))) (c) Concurrent treatment with more than one provider;

(((~~f~~))) (d) Electroconvulsive therapy;

(((~~g~~))) (e) Neuropsychological evaluation (testing);

(((~~h~~))) (f) Day treatment for seriously ill children under eighteen years old;

(((~~i~~))) (g) Referrals for services or treatment not in our fee schedule (((~~see WAC 296-31-040~~)));

(h) Teleconsultations and other telehealth services.

(2) Your request for authorization must be in writing and include:

(a) A statement of the condition(s) diagnosed;

(b) Current DSM or ICD codes;

(c) The relationship of the condition(s) diagnosed to the criminal act; and

(d) An outline of the proposed treatment program that includes its length, components, procedure codes and expected prognosis.

AMENDATORY SECTION (Amending WSR 99-20-031, filed 9/29/99, effective 11/1/99)

WAC 296-31-060 What reports are required from mental health providers? The crime victims compensation program requires the following reports from mental health providers:

(1) **Initial response and assessment: Form I:** This report is required if you are seeing the client for **six sessions or less,** and must contain:

(a) The client's initial description of the criminal act for which they have filed a crime victims compensation claim;

(b) The client's presenting symptoms/issues by your observations and the client's report;

(c) ((~~An estimate of time loss from work as a result of the crime injury, if any. Provide an estimate of when the individual will return to work, why they are unable to work, the extent of impairment and the prognosis for future occupational functioning~~)) If the claimant is unable to work as a result of the crime injury, provide an estimate of when the claimant will return to work and why they are unable to work; and

(d) What type of intervention(s) you provided.

EXCEPTION: If you will be providing more than six sessions it is not necessary to complete Form I, instead complete Form II.

(2) **Initial response and assessment: Form II:** This report is required if **more than six sessions** are anticipated. Form II must be submitted no later than the sixth session, and must contain:

(a) The client's initial description of the criminal act for which they have filed a crime victims compensation claim;

(b) A summary of the essential features of the client's symptoms related to the criminal act, beliefs/attributions, vulnerabilities, defenses and/or resources that lead to your clini-

cal impression (refer to current DSM and crime victims compensation program guidelines);

(c) Any preexisting or coexisting emotional/behavioral or health conditions relevant to the crime impact if present, and how they may have been exacerbated by the crime victimization;

(d) Specific diagnoses with current DSM or ICD code(s), including axes 1 through 5, and the highest GAF in the past year;

(e) Treatment plan based on diagnoses and related symptoms, to include:

(i) Specific treatment goals you and the client have set;

(ii) Treatment strategies to achieve the goals;

(iii) How you will measure progress toward the goals; and

(iv) Any auxiliary care that will be incorporated.

(f) A description of your assessment of the client's treatment prognosis, as well as any extenuating circumstances and/or barriers that might affect treatment progress; and

(g) ((~~An estimate of time loss from work as a result of the crime injury, if any. Provide an estimate of when the individual will return to work, why they are unable to work, the extent of impairment and the prognosis for future occupational functioning.~~)) If the claimant is unable to work as a result of the crime injury, provide an estimate of when the claimant will return to work and why they are unable to work.

(3) **Progress note: Form III:** This report must be completed **after session fifteen has been conducted,** and must contain:

(a) Whether there has been substantial progress towards recovery for the crime related condition(s);

(b) If you expect treatment will be completed within thirty visits (for adults) or forty visits (for children); and

(c) What complicating or confounding issues are hindering recovery.

(4) **Treatment report: Form IV:** This report must be completed for authorization for **treatment beyond thirty sessions for adults or forty sessions for children,** and **again for authorization if treatment will go beyond fifty sessions for adults or sixty sessions for children. Form IV** must contain:

(a) The diagnoses at treatment onset with current DSM or ICD code(s), including axes 1 through 5, and the highest GAF in the past year;

(b) The current diagnoses, if different now, with current DSM or ICD code(s), including axes 1 through 5, and the highest GAF in the past year; and

(c) Proposed plan for treatment and number of sessions requested, and an explanation of:

(i) Substantial progress toward treatment goals;

(ii) Partial progress toward treatment goals; or

(iii) Little or no progress toward treatment goals.

(5) ((~~**Treatment report: Form V:** This report must be completed for authorization for **treatment beyond fifty sessions for adults or sixty sessions for children,** and must contain:~~

~~(a) The diagnoses at treatment onset with current DSM or ICD code(s), including axes 1 through 5, and the highest GAF in the past year;~~

~~(b) The current diagnoses, if different now, with current DSM or ICD code(s), including axes 1 through 5, and the highest GAF in the past year;~~

~~(c) Proposed plan for treatment and number of sessions requested, and an explanation of:~~

~~(i) Substantial progress toward treatment goals;~~

~~(ii) Partial progress toward treatment goals; or~~

~~(iii) Little or no progress toward treatment goals.~~

~~(6)~~)) **Termination report: Form ((~~VI~~)) V:** If you **discontinue treatment of a client** for any reason, a termination report should be completed within sixty days of the client's last visit, and must contain:

(a) Date of last session;

(b) Diagnosis at the time client stopped treatment;

(c) Reason for termination (e.g., goals achieved, client terminated treatment, client relocated, referred to other services, etc.); and

(d) At this point in time do you believe there is any permanent loss in functioning as a result of the crime injury? If yes, describe symptoms based on diagnostic criteria for a DSM diagnosis.

(((~~7~~))) (6) **Reopening application: This application is required to reopen a claim** that has been closed more than ninety days, to demonstrate a worsening of the client's condition and a need for treatment. Benefits are limited to fifty thousand dollars per claim. If the claimant has met or exceeded the maximum benefit, we will be unable to pay for reopening exams or diagnostic tests. If the benefits paid on this claim are less than the fifty thousand dollar maximum benefit, we will reimburse you for filing the application, for an office visit, and diagnostic studies needed to complete the application up to the fifty thousand dollar maximum benefit. No other benefits will be paid until a decision is made on the reopening. If the claim is reopened, we will pay benefits for a maximum of sixty days prior to the date we received the reopening application.

AMENDATORY SECTION (Amending WSR 99-20-031, filed 9/29/99, effective 11/1/99)

WAC 296-31-065 Can my client be referred for a consultation? (1) There may be instances when the ((~~client's accepted mental health condition presents a diagnostic or therapeutic challenge. In such cases, you or the department may refer the client for a consultation or you may ask the department for an independent mental health examination~~)) department or the claimant's mental health provider may want to refer the claimant for a consultation. For example, if the claimant's accepted mental health condition presents a diagnostic or therapeutic challenge, or if the department needs additional information to make a decision on the claim.

(2) There are two levels of consultations that can be performed: Limited and extensive. Descriptions and procedure codes are included in the *Crime Victims Compensation Program Mental Health ((~~Treatment Rules and~~)) Fee((~~s~~)) Schedule and Billing Guidelines*.

(3) The consultant will be required to submit a report to the department that contains the following elements:

(a) The reason(s) for the consultation referral; ((~~and~~))

(b) Consultants related recommendations;

(c) Other information as requested by the department.

(4) Authorization from the department is required for:

(a) More than two consultations before the thirtieth session for adults or fortieth session for children; and

(b) More than one consultation between thirty and fifty sessions for adults or between forty and sixty sessions for children.

(5) You may **not** make a referral for a consultation if:

(a) An independent ((~~mental health~~)) medical examination has been scheduled;

(b) A consultation has been scheduled by the department;

(c) Claim reopening is pending; or

(((~~c~~))) (d) The claim is closed.

Note: The consultant must meet provider registration requirements per WAC 296-31-030.

AMENDATORY SECTION (Amending WSR 99-20-031, filed 9/29/99, effective 11/1/99)

WAC 296-31-067 When is concurrent treatment allowed? (1) In some cases, treatment by more than one provider may be allowed by the crime victims compensation program. We may authorize concurrent treatment on an individual basis:

(a) If the accepted condition requires specialty or multidisciplinary care.

Note: Individual and group counseling sessions given by more than one provider is not concurrent treatment.

(b) If we receive and approve your written request that contains:

(i) The name, address, discipline, and specialty of each provider requested to assist in treating the client;

(ii) An outline of each provider's responsibility in the case; and

(iii) An estimated length for the period of concurrent treatment.

(2) If we approve concurrent treatment, we will recognize one primary attending mental health treatment provider. That provider will be responsible for:

(a) Directing the overall treatment program for the client;

(b) Providing us with copies of all reports received from involved providers; and

(c) In ((~~time~~)) wage loss cases, providing us with adequate evidence certifying the claimant's inability to work.

AMENDATORY SECTION (Amending WSR 99-20-031, filed 9/29/99, effective 11/1/99)

WAC 296-31-068 When can a ((~~client~~)) claimant transfer providers? (1) RCW ((~~51.36.010~~)) 7.68.095 provides that ((~~clients~~)) claimants are entitled to a free choice of attending providers, who are registered with the department, subject to the limits of RCW 7.68.130 and the requirements of the claimant's public or private insurance. The provider must meet registration requirements of WAC 296-31-030.

(2) The department must be notified if a ((~~client~~)) claimant changes providers.

(3) We may require a ((~~client~~)) claimant to select another provider for treatment under the following conditions:

(a) When a provider, qualified and available to provide treatment, is more conveniently located;

(b) When the attending provider fails to comply with our rules;

(c) Subject to the limits of RCW 7.68.130 outlined in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 00-03-056, filed 1/14/00, effective 2/14/00)

WAC 296-31-074 What if ((~~my patient~~)) the claimant has an unrelated condition? (1) You must immediately notify us when you are treating an unrelated condition concurrently with an accepted condition and provide us with the following information:

(a) Diagnosis and/or nature of unrelated condition;

(b) Treatment being provided; and

(c) The effect, if any, on the accepted condition.

(2) Temporary treatment of an unrelated condition may be allowed and payment for service authorized if:

(a) We approve your request for authorization prior to treatment;

(b) You give us a thorough explanation of how the unrelated condition is affecting the accepted condition;

(c) ((~~Treatment of~~)) The unrelated condition is retarding recovery of the accepted condition; and

(d) We receive monthly reports from you, outlining treatment and its effect on both the unrelated and accepted conditions.

(3) We will not approve or pay for treatment of:

(a) An unrelated condition that has no influence or no longer influences the existing condition.

(b) A preexisting unrelated condition that was treated prior to acceptance of the crime victim's claim, unless it is retarding recovery of the accepted condition.

AMENDATORY SECTION (Amending WSR 99-07-004, filed 3/4/99, effective 4/4/99)

WAC 296-31-075 What is excess recovery? The remaining balance of a recovery, which is paid to the ((~~victim~~)) claimant but must be used to offset future payment of benefits.

How does excess effect the bill payment process?

(1) When an excess recovery exists, the department is not responsible for payment of bills.

(2) The provider must bill the department in accordance with the department's medical aid rules and maximum fee schedules.

(3) The department will:

(a) Determine the amount payable according to the fee schedule;

(b) Credit the excess recovery with the amount payable; and

(c) Send the provider a remittance advice showing the amount due from the ((~~victim~~)) claimant.

(4) The ((~~victim~~)) claimant must pay the provider in accordance with the remittance advice.

(5) When the excess is reduced to zero the department will resume responsibility for payment of bills.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-31-040	Can the department purchase or authorize a special service or treatment that does not appear in its fee schedule?
WAC 296-31-057	Can the department penalize a provider?
WAC 296-31-069	For what reasons may the department require independent mental health or independent medical evaluations be obtained?
WAC 296-31-06901	What is required in an independent mental health evaluation report?
WAC 296-31-06903	Who may perform independent mental health evaluations for the crime victims compensation program?
WAC 296-31-06905	How does a provider become an approved examiner to perform independent mental health evaluations for the crime victims compensation program?
WAC 296-31-06907	What factors does the crime victims compensation program consider in approving or removing examiners from the approved examiners list?
WAC 296-31-06909	Is there a fee schedule for independent mental health evaluations?
WAC 296-31-070	What are my general obligations as an approved mental health provider?

AMENDATORY SECTION (Amending WSR 02-06-024, filed 2/25/02, effective 3/28/02)

WAC 296-33-010 Attendant services. (1) **What are attendant services?**

Attendant services are proper and necessary personal care services (custodial care) provided to maintain the ((~~victim~~)) claimant in their residence.

(2) **Who may receive attendant services?**

((~~Victims~~)) Claimants who are temporarily or permanently totally disabled and rendered physically unable to care for themselves due to the crime may receive attendant services.

(3) **Is prior authorization required for attendant services?**

Yes. To be covered by the crime victims compensation program, attendant services must be requested by the attending physician and authorized by the department before services begin.

(4) **Am I required to use other insurance coverage before the crime victims compensation program will cover attendant services?**

Yes, all other insurances both private and public must be used first.

(5) **When will the crime victims program stop paying for attendant care services?**

The program will stop payment of attendant care services if the service is no longer medically necessary, or the maximum benefit of fifty thousand dollars is reached.

(6) **What attendant services does the crime victims program cover?**

The program covers proper and necessary attendant services that are provided consistent with the ((~~victim's~~)) claimant's needs, abilities and safety. Only attendant services that are necessary due to the physical restrictions caused by the crime are covered.

The following are examples of attendant services that may be covered:

- Bathing and personal hygiene;
- Dressing;
- Administration of medications;
- Specialized skin care, including changing or caring for dressings or ostomies;
- Tube feeding;
- Feeding assistance (not meal preparation);
- Mobility assistance, including walking, toileting and other transfers;
- Turning and positioning;
- Bowel and incontinent care; and
- Assistance with basic range of motion exercises.

((~~(6)~~)) (7) **What attendant services are not covered?**

Services the department considers everyday environmental needs, unrelated to the medical needs of the ((~~victim~~)) claimant, are not covered. The following are examples of some chore services that are not covered:

- Housecleaning;
- Laundry;
- Shopping;
- Meal planning and preparation;
- Transportation of the ((~~victim~~)) claimant;
- Errands for the ((~~victim~~)) claimant;
- Recreational activities;
- Yard work;
- Child care.

((~~(7)~~)) (8) **Will the crime victims compensation program review the attendant services being provided?**

Yes. Periodic evaluations by the crime victims compensation program or its designee will be performed. Evaluations may include, but not be limited to, a medical records review and an on-site review of appropriate attendant services consistent with the ((~~victim's~~)) claimant's needs, ability, and safety.

((~~(8)~~)) (9) **Who is eligible to become a provider of attendant services?**

((~~Any person eighteen years of age and over that maintains an active provider account with the crime victims compensation program. Attendant service providers can be family members or others who the victim hires to perform non-skilled home nursing services.~~

~~(9) **Is my attendant service provider(s) an employee(s) of the crime victims compensation program?**~~

~~No. Even though the crime victims compensation program is required by the federal government to withhold certain payroll taxes from moneys paid to some nonagency providers, the victim is the common law employer of attendant service provider(s).~~)) Attendant services must be provided through an agency licensed, certified or registered to provide home care or home health services.

(10) **How can a provider obtain a provider account number from the department?**

In order to receive a provider account number from the department, a provider must:

• Complete a provider account application;

• Sign a provider agreement;

• Provide a copy of any practice or other license held;

• Complete, sign and return Form W-9; and

• Meet the department's provider eligibility requirements.

Note: A provider account number is required to receive payment from the department but is not a guarantee of payment for services.

(11) **How many hours will be authorized for attendant services?**

The crime victims compensation program will determine the maximum hours of authorized care based on an independent nursing assessment conducted in the ((~~victim's~~)) claimant's residence. More than one provider may be authorized, based on the ((~~victim's~~)) claimant's needs and the availability of providers. Attendant service providers are limited to a maximum of seventy hours per week per provider.

(12) **What are the provider account status definitions?**

• Active - Account information is current and provider is eligible to receive payment.

• Inactive - Account is not eligible to receive payment based on action by the department or at provider request. These accounts can be reactivated.

• Terminated - Account is not eligible to receive payment based on action by the department or at provider request. These accounts cannot be reactivated.

(13) **When may the department inactivate a provider account?**

The department may inactivate a provider account when:

• There has been no billing activity on the account for ((~~thirty-six~~)) eighteen months; or

• The provider requests inactivation; or

• Provider communications are returned due to address changes; or

• The department changes the provider application or application procedures; or

• Provider does not comply with department request to update information.

(14) **When may the department terminate a provider account?**

The department may terminate a provider account when:

• The provider is found ineligible to treat per department rules; or

• The provider requests termination; or

• The provider dies or is no longer in active business status.

(15) **How can a provider reactivate a provider account?**

To reactivate a provider account, the provider may call or write the department. The department may require the provider to update the provider application and/or agreement or complete other needed forms prior to reactivation. Account reactivation is subject to department review. If a provider account has been terminated, a new provider application will be required.

WSR 12-23-087

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 20, 2012, 4:12 p.m., effective December 21, 2012]

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

Purpose: The rules implement changes made by chapter 2, Laws of 2012 1st sp. sess. (SHB 2491). The amendments to WAC 192-350-010 define statutory terminology that is necessary to determine when a predecessor-successor relationship exists for the purpose of calculating unemployment insurance tax rates. The amendments to WAC 192-350-060 establish consequences for an employer's failure to respond to requests for information.

Citation of Existing Rules Affected by this Order: Amending WAC 192-350-010 and 192-350-060.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 12-20-064 on October 2, 2012.

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 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 2, Repealed 0.

Date Adopted: November 20, 2012.

Paul Trause
Commissioner

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-350-010 What is a predecessor-successor relationship? (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets((,)) including, but not limited to, the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. A predecessor-successor relationship also exists when an employer transfers its business to another employer, and both employers are at the time of transfer under substantially common ownership, management or control. Whether or not a predecessor-successor relationship (including a "partial predecessor" or "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor," including a "full predecessor" or "partial predecessor," if, during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

(b) A separate unit or branch of its trade or business.

(4) **Successor.** A "successor" may be either a "full successor" or a "partial successor." An employer may be a "full successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

(b) A separate unit or branch of a predecessor employer's trade or business.

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (((~~(9)~~)) (12) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Common ownership, management and control.** Common ownership, common management and common control must be established when the transfer of a business occurs. In determining whether common ownership, management and control exist, the department may consider:

(a) Ownership-legal owner for tax and liability purposes;

(b) Familial relationships;

(c) Principals;

(d) Organized structure;

(e) Day-to-day operations;

(f) Assets and liabilities;

(g) Stated business purposes; and

(h) Other information pertinent to the inquiry.

The employer must meet all three elements, common ownership, common management and common control, for the exemption to apply.

(9) **Substantially common ownership, management or control.** In determining whether substantially common ownership, management or control exists, the department may consider the extent of commonality and similarity between employers based on:

(a) Ownership-legal owner for tax and liability purposes;

(b) Familial relationships;

(c) Principals;

(d) Corporate officers;

(e) Organized structure;

(f) Day-to-day operations;

(g) Assets and liabilities;

(h) Stated business purposes; and

(i) Other information pertinent to the inquiry.

This standard is met when **any** common ownership, management or control exists between the employers.

(10) **Substantially similar businesses.** Substantially similar business are businesses:

(a) In which the products sold or services provided exhibit a high degree of likeness but may be less than identical; and

(b) Which could reasonably be in competition with one another to provide a substantially similar service or a substantially similar product.

(11) A significant purpose of the transfer of business must be more than an incidental purpose, but may be one of many purposes. Evidence of a significant purpose of the transfer of a business may be shown by:

(a) Business records, such as corporate minutes or other documents;

(b) Statements by owners or officers of the business, or by an outside party, such as an accounting firm or tax advisor, made contemporaneous with the transfer; or

(c) Other credible evidence of the employer's intent.

Employers must provide the department evidence of the purpose of the transfer no later than thirty days after the date of transfer.

(12) **Factors.** Factors should be weighed instead of merely adding up the number of individual factors. No single factor is necessarily conclusive. Some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "full successor" or "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

((~~(9)~~)) (13) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating)((~~,~~)):

(i) When any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by the predecessor, successor, or a combination of both; or

(ii) When a significant purpose of the transfer of a business or its operating assets is for the employer to move or expand an existing business, or for an employer to establish a substantially similar business under common ownership, management and control.

((~~(10)~~)) (14) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

AMENDATORY SECTION (Amending WSR 07-23-131, filed 11/21/07, effective 1/1/08)

WAC 192-350-060 What are the consequences if ((~~the predecessor or successor~~)) an employer fails to respond to requests for information related to a predecessor-successor designation? (1) Thirty days after mailing a request for information to an employer regarding a predecessor-successor relationship, the department may determine if a predecessor-successor relationship exists based on the information available at that time.

(2) The department may send a letter to a predecessor or successor employer to determine a partial transfer of experience. A partial successor or predecessor employer must respond to the letter within thirty days of the mailing date. The response must show the percentage of operating assets transferred to the partial successor. Operating assets include the employees of the business.

((~~(2)~~)) (3) If the employer does not respond, the department may apply RCW 50.12.080 to determine necessary facts. In addition, for subsequent rate years the commissioner may estimate the percentage of operating assets transferred based on the best available information, which may include employment reports filed. That percentage will transfer to the successor until it provides compelling evidence to change the estimate. Any change in the estimate will be prospective only.