

**WSR 13-06-016**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed February 25, 2013, 4:11 p.m.]

exempts rules that set or adjust fees or rates pursuant to legislative standards.

February 25, 2013  
 Mary C. Selecky  
 Secretary

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-900(5), Sanitary control of shellfish—Fees—Commercial geoduck paralytic shellfish poisoning (PSP) testing.

Hearing Location(s): Department of Health, Town Center 3, Room 252, 243 Israel Road S.E., Tumwater, WA 98501, on April 15, 2013, at 10:00 a.m.

Date of Intended Adoption: May 1, 2013.

Submit Written Comments to: Brandy Brush, Department of Health, Office of Shellfish and Water Protection, 243 Israel Road S.E., Tumwater, WA 98501, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by April 15, 2013.

Assistance for Persons with Disabilities: Contact Brandy Brush by April 11, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to equitably assess the costs of commercial geoduck PSP testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck, and ensure toxic shellfish do not reach consumers.

Reasons Supporting Proposal: The proposed geoduck PSP fee redistribution is based on the 2012 total cost of service for the entities that submitted geoduck tests and the number of tests done for each entity. The annual redistribution of the fees assesses each entity their proportionate amount of the total fee based on the number of tests they submitted. The regulated community is aware of, participates in, and supports this annual change.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 243 Israel Road S.E. Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Rick Porso, 243 Israel Road S.E. Tumwater, WA 98501, (360) 236-3302.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi)

AMENDATORY SECTION (Amending WSR 12-14-073, filed 7/2/12, effective 8/2/12)

**WAC 246-282-990 Fees.** (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(3) The fee for each export certificate is \$20.00.

(4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category	Type of Operation	Number of Harvest Sites	Fee
	Harvester	≤ 2	\$173
	Harvester	3 or more	\$259
	Shellstock Shipper	≤ 2	\$195
	0 - 49 acres		
	Shellstock Shipper	3 or more	\$292
	0 - 49 acres		
	Shellstock Shipper	N/A	\$468
	50 or greater acres		
	Shucker-Packer	≤ 2	\$354
	(plants < 2000 ft <sup>2</sup> )		
	Shucker-Packer	3 or more	\$533
	(plants < 2000 ft <sup>2</sup> )		
	Shucker-Packer	≤ 2	\$429
	(plants 2000 - 5000 ft <sup>2</sup> )		

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Shucker-Packer (plants 2000 - 5000 ft <sup>2</sup> )	3 or more	\$644
Shucker-Packer (plants > 5000 ft <sup>2</sup> )	N/A	\$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shell-stock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(9,433)</del> <u>8,310</u>
Discovery Bay Shellfish	<del>\$(40+)</del> <u>166</u>
Jamestown S'Klallam Tribe	<del>\$(3,412)</del> <u>3,158</u>
Lower Elwha Klallam Tribe	<del>\$(4,817)</del> <u>2,991</u>
<u>Nisqually Tribe</u>	<u>\$5,318</u>
Port Gamble S'Klallam Tribe	<del>\$(7,626)</del> <u>4,653</u>
Puyallup Tribe of Indians	<del>\$(6,221)</del> <u>10,470</u>
<del>((Seattle Shellfish</del>	<del>\$20+)</del>
<u>Skokomish Indian Tribe</u>	<u>\$665</u>
Squaxin Island Tribe	<del>\$(1,605)</del> <u>997</u>
Suquamish Tribe	<del>\$(17,261)</del> <u>11,135</u>
Swinomish Tribe	<del>\$(1,003)</del> <u>332</u>
Taylor Shellfish	<del>\$(602)</del> <u>166</u>
Tulalip Tribe	<del>\$(5,418)</del> <u>9,639</u>

(6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 13-06-017**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed February 25, 2013, 4:12 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-240 WAC, Radiation protection-medical use of radioactive material, the department is proposing to adopt federal rule changes to make the rule consistent with the federal Nuclear Regulatory Commission's (NRC) rules and make editorial changes.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98513, on April 9, 2013, at 10:30 a.m.

Date of Intended Adoption: April 23, 2013.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47827, Tumwater, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by April 9, 2013.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by April 1, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to adopt NRC's rule changes titled "2009-1: Medical use of byproduct material - authorized user clarification." Under the formal state agreement between the governor and NRC, the office of radiation protection (the state radiation control program) is required to remain compatible with NRC's rules. This is done through rule revisions to make state rules consistent with, and at least as stringent as, NRC rules.

Reasons Supporting Proposal: This rule making is required to comply with RCW 70.98.050 (4)(d) and a formal agreement signed between the state of Washington and the Atomic Energy Commission under section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. sec. 2021), the Energy Policy Act of 2005.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, 74 F.R. 33901.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Curt DeMaris, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without

material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

February 25, 2013  
Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-010 Definitions, abbreviations, and acronyms.** The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

~~((1))~~ **(1) "Address of use"** means the building or buildings that are identified on the license and where radioactive material may be received, prepared, used, or stored.

~~((2))~~ **(2) "Area of use"** means a portion of an address of use that has been set aside for the purpose of receiving, preparing, using, or storing radioactive material.

~~((3))~~ **(3) "Attestation"** means written certification under oath.

**(4) "Authorized medical physicist"** means an individual who:

(a) Meets the requirements in WAC 246-240-072 and 246-240-081; or

(b) Is identified as an authorized medical physicist or teletherapy physicist on:

(i) A specific medical use license issued by the department, ~~((the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state;

(ii) A medical use permit issued by a ~~((U.S.))~~ NRC master material licensee;

(iii) A permit issued by a ~~((U.S.))~~ NRC or agreement state broad scope medical use licensee; or

(iv) A permit issued by a ~~((U.S.))~~ NRC master material license broad scope medical use permittee.

~~((4))~~ **(5) "Authorized nuclear pharmacist"** means a pharmacist who:

(a) Meets the requirements in WAC 246-240-075 and 246-240-081; or

(b) Is identified as an authorized nuclear pharmacist on:

(i) A specific license issued by the department, ~~((the U.S.))~~ NRC or an agreement state, that authorizes medical use or the practice of nuclear pharmacy;

(ii) A permit issued by a ~~((U.S.))~~ NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(iii) A permit issued by a ~~((U.S.))~~ NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(iv) A permit issued by a ~~((U.S.))~~ NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(c) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(d) Is designated as an authorized nuclear pharmacist in accordance with WAC 246-235-100(2).

~~((4))~~ **(6) "Authorized user"** means a physician, dentist, or podiatrist who:

(a) Meets the requirements in WAC 246-240-081 and 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, 246-240-301, or 246-240-399; or

(b) Is identified as an authorized user on:

(i) A department, ~~((U.S.))~~ NRC, or agreement state license that authorizes the medical use of radioactive material; or

(ii) A permit issued by a ~~((U.S.))~~ NRC master material licensee that is authorized to permit the medical use of radioactive material; or

(iii) A permit issued by a department, ~~((U.S.))~~ NRC, or agreement state specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

(iv) A permit issued by a ~~((U.S.))~~ NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

~~((5))~~ **(7) "Brachytherapy"** means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal, or interstitial application.

~~((6))~~ **(8) "Brachytherapy source"** means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

~~((7))~~ **(9) "Client's address"** means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with WAC 246-240-125.

~~((8))~~ **(10) "Cyclotron"** means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 mega-electron volts and is commonly used for production of short half-life radionuclides for medical use.

~~((9))~~ **(11) "Dedicated check source"** means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

~~((10))~~ **(12) "Dentist"** means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

~~((11))~~ **(13) "FDA"** means the U.S. Food and Drug Administration.

**(14) "High dose-rate remote afterloader"** ~~((as used in this chapter,))~~ means a brachytherapy device that remotely delivers a dose rate in excess of 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

~~((12))~~ **(15) "Low dose-rate remote afterloader"** ~~((as used in this chapter,))~~ means a brachytherapy device that remotely delivers a dose rate of less than or equal to 2 gray (200 rads) per hour at the point or surface where the dose is prescribed.

~~((13))~~ **(16) "Management"** means the chief executive officer or other individual having the authority to manage, direct, or administer the licensee's activities, or that person's delegate or delegates.

~~((14))~~ **(17) "Manual brachytherapy"** ~~((as used in this chapter,))~~ means a type of brachytherapy in which the

brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

~~((15))~~ **(18) "Medical event"** means an event that meets the criteria in WAC 246-240-651.

~~((16))~~ **(19) "Medical institution"** means an organization in which more than one medical discipline is practiced.

~~((17))~~ **(20) "Medical use"** means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

~~((18))~~ **(21) "Medium dose-rate remote afterloader"** (~~as used in this chapter~~) means a brachytherapy device that remotely delivers a dose rate of greater than 2 gray (200 rads), but less than or equal to 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

~~((19))~~ **(22) "Mobile medical service"** means the transportation of radioactive material to and its medical use at the client's address.

~~((20))~~ **(23) "Output"** means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader, or gamma stereotactic radiosurgery unit for a specified set of exposure conditions.

~~((21))~~ **(24) "Patient intervention"** means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

~~((22))~~ **(25) "Podiatrist"** means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

~~((23))~~ **(26) "Positron emission tomography ((PET)) radionuclide production facility"** means a facility operating an accelerator for the purpose of producing ((PET)) positron emission tomography radionuclides.

~~((24))~~ **(27) "Preceptor"** means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or ~~((a))~~ an authorized radiation safety officer.

~~((25))~~ **(28) "Prescribed dosage"** means the specified activity or range of activity of unsealed radioactive material as documented:

(a) In a written directive; or

(b) In accordance with the directions of the authorized user for procedures performed under WAC 246-240-151 and 246-240-157.

~~((26))~~ **(29) "Prescribed dose"** means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive;

(c) For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(d) For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

~~((27))~~ **(30) "Pulsed dose-rate remote afterloader"** (~~as used in this chapter~~) means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but:

(a) Is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

(b) Is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

~~((28) "Radiation safety officer" means an individual who:~~

~~(a) Meets the requirements in WAC 246-240-069 and 246-240-081; or~~

~~(b) Is identified as a radiation safety officer on a specific medical use license issued by the department prior to October 5, 2005, the U.S. NRC or an agreement state; or~~

~~(c) A medical use permit issued by a commission master material licensee.~~

~~((29))~~ **(31) "Sealed source and device registry"** means the national registry that contains all the registration certificates, generated by ~~(both the U.S.)~~ NRC and the agreement states, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

~~((30))~~ **(32) "Stereotactic radiosurgery"** means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

~~((31))~~ **(33) "Structured educational program"** means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

~~((32))~~ **(34) "Teletherapy"** (~~as used in this chapter~~) means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

~~((33))~~ **(35) "Temporary job site"** means a location where mobile medical services are conducted at other than those fixed location(s) of use authorized ~~((on))~~ by the license.

~~((34))~~ **(36) "Therapeutic dosage"** means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

~~((35))~~ **(37) "Therapeutic dose"** means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

~~((36))~~ **(38) "Treatment site"** means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

~~((37))~~ **(39) "Type of use"** means use of radioactive material under WAC 246-240-151, 246-240-157, 246-240-201, 246-240-251, 246-240-301, 246-240-351, or 246-240-501.

~~((38))~~ **(40) "Unit dosage"** means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

~~((399))~~ (41) **"Written directive"** means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in WAC 246-240-060.

**AMENDATORY SECTION** (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-016 License required.** (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the department, ~~((the U.S.))~~ NRC or an agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not needed for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with these rules under the supervision of an authorized user under ~~((#))~~ WAC 246-240-057, unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with these rules under the supervision of an authorized nuclear pharmacist or authorized user under WAC 246-240-057, unless prohibited by license condition.

**AMENDATORY SECTION** (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-022 License amendments.** A licensee shall apply for and must receive a license amendment before the licensee:

(1) Receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;

(2) Permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:

(a) For an authorized user, an individual who meets the requirements in WAC 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, or 246-240-399;

(b) For an authorized nuclear pharmacist, an individual who meets the requirements in WAC 246-240-075 and 246-240-081;

(c) For an authorized medical physicist, an individual who meets the requirements in WAC 246-240-072 and 246-240-081; or

(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:

(i) On a permit issued by ~~((U.S.))~~ NRC license or other equivalent license recognized by the department that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

(ii) On a permit issued by ~~((a commission))~~ NRC or an agreement state specific license of broad scope ~~((that))~~ which is ((authorized)) licensed to ((permit)) authorize the use of ~~((by-product))~~ radioactive material in medical use or in the practice of nuclear pharmacy;

(ii) On a permit issued by ~~((a commission))~~ NRC master material licensee that is ~~((authorized))~~ licensed to ((permit)) authorize the use of ~~((by-product))~~ radioactive material in medical use or in the practice of nuclear pharmacy; or

(iv) By a commercial nuclear pharmacy that has been ~~((authorized))~~ licensed to ((identify authorized)) authorize nuclear pharmacists.

(3) Changes radiation safety officers, except as provided in WAC 246-240-051;

(4) Receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

(5) Adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either WAC 246-240-151 or 246-240-157;

(6) Changes the address(es) of use identified in the application or on the license; and

(7) Revises procedures required by WAC 246-240-360, 246-240-378, 246-240-381, and 246-240-384, as applicable, where the revision reduces radiation safety.

**AMENDATORY SECTION** (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-051 Authority and responsibilities for the radiation protection program.** (1) In addition to the radiation protection program requirements of WAC 246-221-005, a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the department;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted under WAC 246-240-054;

(2) A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

(3) For up to sixty days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under WAC 246-240-069 and 246-240-081, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, under subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the department in accordance with WAC 246-240-025.

(4) A licensee may simultaneously appoint more than one temporary radiation safety officer under subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the radiation safety officer in writing.

(6) Licensees that are authorized for two or more different types of use of radioactive material under WAC 246-240-201, 246-240-251, ~~((and/))~~ or 246-240-351, shall establish a radiation safety committee to oversee all uses of radioactive material permitted by the license. The committee must include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative, to:

- (a) Identify radiation safety problems;
- (b) Initiate, recommend, or provide corrective actions;
- (c) Stop unsafe operations; and
- (d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section in accordance with WAC 246-240-551.

**AMENDATORY SECTION** (Amending WSR 07-14-131, filed 7/3/07, effective 8/3/07)

**WAC 246-240-066 Suppliers for sealed sources or devices for medical use.** For medical use, a licensee may only use:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued under WAC 246-235-102.

(2) Sealed sources or devices noncommercially transferred from ~~((a U.S.))~~ NRC or an agreement state medical use licensee; or

(3) Teletherapy sources manufactured and distributed in accordance with a license issued under chapter 246-232 WAC.

**AMENDATORY SECTION** (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-069 Training for radiation safety officer.** Except as provided in WAC 246-240-078, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer under WAC 246-240-051 to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, ~~((the U.S.))~~ NRC, or an agreement state, and who meets the requirements of subsections (4) and (5) of this section. (Specialty boards whose certification process has been recognized by the department, ~~((the U.S. Nuclear Regulatory Commission))~~ NRC, or an agreement state will be posted on ~~((the))~~ NRC's web page, at ~~((http://www.nrc.gov-))~~ http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty college credits in physical science;

(b) Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

(c) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(i) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) Have two years of full-time practical training ~~((and/))~~ or supervised experience in medical physics:

(A) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by ~~((the commission))~~ NRC or an agreement state; or

(B) In clinical nuclear medicine facilities providing diagnostic ~~((and/))~~ or therapeutic services under the direction of physicians who meet the requirements for authorized users in WAC 246-240-078, 246-240-163 or 246-240-210; and

(ii) Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(d) Obtain written ~~((certification under oath))~~ attestation signed by a preceptor radiation safety officer that the individual has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; or

(2)(a) Has completed a structured educational program consisting of both:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Radiation biology; and

(E) Radiation dosimetry; and

(ii) One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a department or agreement state license or license issued by ~~((the U.S.))~~ NRC that authorizes similar type(s) of use(s) of radioactive material involving the following:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

(C) Securing and controlling radioactive material;

(D) Using administrative controls to avoid mistakes in the administration of radioactive material;

(E) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(F) Using emergency procedures to control radioactive material; and

(G) Disposing of radioactive material; or

(b) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, ~~((the U.S.))~~ NRC, or an agreement state under WAC 246-240-072 and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer and who meets the requirements in subsections (4) and (5) of this section; or

(3) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license or a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, ~~((the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state under WAC 246-240-072 and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities; and

(4) Has obtained written ~~((certification under oath))~~ attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsection (5) of this section, and in subsection (1)(a) and (b), or (c)(i) and (ii) of this section, or subsection (2)(a) or (b) of this section, or subsection (3) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(5) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by an authorized medical physicist, authorized user, authorized nuclear pharmacist, or radiation safety officer, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-072 Training for an authorized medical physicist.** Except as provided in WAC 246-240-078, the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, ~~((the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state and who meets the requirements in subsections (2)(b) and (3) of this section. (Specialty boards whose certification process has been recognized by ~~((the commission))~~ NRC or an agreement state will be posted on ~~((the))~~ NRC's web page at ~~((http://www.nrc.gov.))~~ <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have two years of full-time practical training ~~((and/))~~ or supervised experience in medical physics:

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by ~~((the commission))~~ NRC or an agreement state; or

(ii) In clinical radiation facilities providing high energy, external beam therapy (photons and electrons with energies greater than or equal to one million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in WAC 246-240-078, 246-240-278 or 246-240-399;

(c) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use modalities for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high energy, external beam therapy and brachytherapy services and must include:

(i) Performing sealed source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written ~~((certification under oath))~~ attestation that the individual has satisfactorily completed the requirements in subsections (1)(a) and (b) and (3), or (2)(a) and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written ~~((certification under oath))~~ attestation must be signed by a preceptor authorized medical physicist who meets the requirements in WAC 246-240-072, 246-240-078, or equivalent ~~((U.S.))~~ NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type(s) of use in the modalities for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-075 Training for an authorized nuclear pharmacist.** Except as provided in WAC 246-240-078, the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, (~~(the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state and who meets the requirements in subsection (2)(b) of this section. (Specialty boards whose certification process has been recognized by (~~(the commission))~~ NRC or an agreement state will be posted on (~~(the))~~ NRC's web page at (~~(http://www.nrc.gov.))~~ http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (~~((ACPE))~~) or have passed the Foreign Pharmacy Graduate Examination Committee (~~((FPGEC))~~) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least four thousand hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than two thousand hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, which assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2)(a) Has completed two hundred hours in a structured educational program consisting of both:

(i) Didactic training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use; and

(E) Radiation biology; and

(ii) Supervised practical experience in a nuclear pharmacy involving:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha-or beta-emitting radionuclides;

(C) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) Using administrative controls to avoid medical events in the administration of radioactive material; and

(E) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) Has obtained written (~~(certification under oath))~~ attestation, signed by a preceptor authorized nuclear pharma-

cist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (b), and (c) or (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-078 Training for experienced radiation safety officer, teletherapy or medical physicist, authorized user, and nuclear pharmacist.** (1) An individual identified as a radiation safety officer, a teletherapy or medical physicist, or a nuclear pharmacist on a department, (~~((U.S.))~~ NRC, or agreement state license, or a permit issued by an agreement state or (~~((U.S.))~~ NRC broad scope licensee or master material license permit, or by a master material license permittee of broad scope before October 24, 2006, need not comply with the training requirements of WAC (~~((246-240-278))~~ 246-240-069, 246-240-072, or 246-240-075, respectively.

(2) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the department or agreement state, or (~~((U.S.))~~ NRC broad scope license, or license issued before October 24, 2006, who perform only those medical uses for which they were authorized on that date need not comply with the training requirements of WAC 246-240-151 and 246-240-399.

(3) Individuals who need not comply with training requirements as described in this section may serve as preceptors for, and supervisors of, applicants seeking authorization on state of Washington radioactive materials licenses for the same uses for which these individuals are authorized.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-107 Determination of dosages of unsealed radioactive material for medical use.** (1) A licensee shall determine and record the activity of each dosage before medical use.

(2) For a unit dosage, this determination must be made by:

(a) Direct measurement of radioactivity; or

(b) A decay correction, based on the activity or activity concentration determined by:

(i) A manufacturer, producer, or preparer licensed under WAC 246-235-100 or equivalent (~~((U.S.))~~ NRC or agreement state requirements; or

(ii) An agreement state or (~~((U.S.))~~ NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (~~((IND))~~) protocol accepted by FDA.

(3) For other than unit dosages, this determination must be made by:

(a) Direct measurement of radioactivity;

(b) Combination of measurement of radioactivity and mathematical calculations; or

(c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a

manufacturer, producer, or preparer licensed under WAC 246-235-100 or equivalent agreement state requirements.

(4) Unless otherwise directed by the authorized user, a licensee may not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty percent.

(5) A licensee shall retain a record of the dosage determination required by this section in accordance with WAC 246-240-569.

**AMENDATORY SECTION** (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-110 Authorization for calibration, transmission, and reference sources.** Any person authorized by WAC 246-240-016 for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use:

(1) Sealed sources, not exceeding 1.11 gigabecquerels (30 millicuries) each, manufactured and distributed by a person licensed under WAC 246-235-102 or equivalent agreement state or ((U.S.)) NRC regulations.

(2) Sealed sources, not exceeding 1.11 gigabecquerels (30 millicuries) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under WAC 246-235-102, or equivalent agreement state or ((U.S.)) NRC regulations if the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than one hundred twenty days in individual amounts not to exceed 0.56 gigabecquerels (15 millicuries).

(4) Any radioactive material with a half-life longer than one hundred twenty days in individual amounts not to exceed the smaller of 7.4 megabecquerels (200 microcuries) or 1000 times the quantities in Schedule B of WAC 246-232-120.

(5) Technetium-99m in amounts as needed.

**AMENDATORY SECTION** (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-113 Requirements for possession of sealed sources and brachytherapy sources.** (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six months or at other intervals approved by the department, ((the U.S.)) NRC, or an agreement state in the sealed source and device registry.

(3) To satisfy the leak test requirements of this section, the licensee shall ensure the sample is analyzed by such method that the leak test can detect the presence of 185 bec-

querels (0.005 microcuries) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with WAC 246-240-572(1).

(5) If the leak test reveals the presence of 185 becquerels (0.005 microcurie((s))) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in chapters 246-221 and 246-232 WAC; and

(b) File a report within five days of the leak test in accordance with WAC 246-240-657.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 3.7 megabecquerels (100 microcuries) or less of beta- or gamma-emitting material or 0.37 megabecquerel((s)) (10 microcuries) or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a physical inventory of all the sources in its possession at intervals not to exceed six months. The licensee shall retain each inventory record in accordance with WAC 246-240-572.

**AMENDATORY SECTION** (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-151 Use of unsealed radioactive material for uptake, dilution, and excretion studies for which a written directive is not required.** Except for quantities that require a written directive under WAC 246-240-060(2), a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer, producer, or preparer licensed under WAC 246-235-100(1) or equivalent ((U.S.)) NRC or agreement state requirements; or

(2) Prepared by an authorized nuclear pharmacist, or a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or an individual under the supervision of either as specified in WAC 246-240-057; or

(3) Obtained from and prepared by an agreement state or ((U.S.)) NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug ((IND)) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a radioactive drug research committee-approved

application or an investigational new drug (~~((HND))~~) protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-154 Training for uptake, dilution, and excretion studies.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-151 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, (~~(the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state and who meets the requirements of subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by the department, the (~~(U.S.))~~ NRC or an agreement state will be posted on (~~(the))~~ NRC's web page at (~~(http://www.nrc.gov-))~~ <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Meet the requirements in subsection (3)(a) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under WAC 246-240-163 or 246-240-210 or equivalent agreement state or (~~(U.S.))~~ NRC requirements; or subsection (3)(a) of this section; or

(3)(a) Has completed sixty hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use; and

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-154, 246-240-163, or 246-240-210 or equivalent (~~(U.S.))~~ NRC or agreement state requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written (~~(certification under oath))~~ attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-154, 246-240-163, or 246-240-210, or equivalent agreement state or (~~(U.S.))~~ NRC requirements, that the individual has satisfactorily completed the requirements in (a) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-151.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-157 Use of unsealed radioactive material for imaging and localization studies for which a written directive is not required.** Except for quantities that require a written directive under WAC 246-240-060(2), a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer, producer, or preparer licensed under WAC 246-235-100(1) or equivalent agreement state or (~~(U.S.))~~ NRC requirements; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or an individual under the supervision of either as specified in WAC 246-240-057;

(3) Obtained from and prepared by an agreement state or (~~(U.S.))~~ NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (~~((HND))~~) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug (~~((HND))~~) protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-163 Training for imaging and localization studies.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-157 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, (~~(the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state and who meets the requirements in subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by (~~(the commission))~~ NRC or an agreement state will be posted on (~~(the U.S.))~~ NRC's web page at (~~(http://www.nrc.gov-))~~ <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Satisfy the requirements in subsection (3)(a) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under WAC 246-240-210 and meets the requirements in WAC 246-240-163 (3)(a)(ii)(G) and 246-240-210 or equivalent agreement state or ~~((U.S.))~~ NRC requirements; or

(3)(a) Has completed seven hundred hours of training and experience, including a minimum of eighty hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use;

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in WAC 246-240-078, 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or equivalent agreement state or ~~((U.S.))~~ NRC requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(G) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written ~~((certification under oath))~~ attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G) or equivalent agreement state or ~~((U.S.))~~ NRC requirements, that the individual has satisfactorily completed the requirements in (a) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-151 and 246-240-157.

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-201 Use of unsealed radioactive material for which a written directive is required.** A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:

(1) Obtained from a manufacturer, producer, or preparer licensed under WAC 246-235-100(1) or equivalent agreement state or ~~((U.S.))~~ NRC requirements; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163 or 246-240-210, or an individual under the supervision of either as specified in WAC 246-240-057; or

(3) Obtained from and prepared by an agreement state or ~~((U.S.))~~ NRC licensee for use in research in accordance with an investigational new drug ~~((IND))~~ protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with an investigational new drug ~~((IND))~~ protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-210 Training for use of unsealed radioactive material for which a written directive is required.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-201 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, ~~((the U.S. Nuclear Regulatory Commission))~~ NRC or an agreement state. (Specialty boards whose certification process has been recognized by ~~((the commission))~~ NRC or an agreement state will be posted on ~~((the))~~ NRC's web page at ~~((http://www.nrc.gov))~~ http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty that includes seven hundred hours of training and experience as described in subsection (2) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association;

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed by-product material; and

(c) Obtain written ~~((certification under oath))~~ attestation that the individual has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-201. The written ~~((certification under oath))~~ attestation must be signed by a preceptor authorized user who meets the requirements in

WAC 246-240-078, 246-240-210, or equivalent ((~~U.S.~~) NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in WAC 246-240-078 or 246-240-210 must have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status; or

(2) Has completed seven hundred hours of training and experience, including a minimum of two hundred hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

(a) Classroom and laboratory training in the following areas:

- (i) Radiation physics and instrumentation;
- (ii) Radiation protection;
- (iii) Mathematics pertaining to the use and measurement of radioactivity;
- (iv) Chemistry of radioactive material for medical use; and
- (v) Radiation biology; and

(b) Work experience, under the supervision of an authorized user who meets the requirements in subsection (1) or (2) of this section, or equivalent ((~~U.S.~~) NRC or agreement state requirements. A supervising authorized user, who meets the requirements in this subsection, must also have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status. The work experience must involve:

- (i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- (ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- (iii) Calculating, measuring, and safely preparing patient or human research subject dosages;
- (iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- (v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- (vi) Eluting generator systems, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and
- (vii) Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

(A) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 for which a written directive is required;

(B) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131. Experience with at least three cases in this also satisfies the requirement in (b)(vii)(A) of this subsection;

(C) Parenteral administration of any beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required; (~~and~~) or

(D) Parenteral administration of any other radionuclide for which a written directive is required; and

(E) Has obtained written (~~(certification under oath)~~ attestation) that the individual has satisfactorily completed the requirements in subsection (1)(a) and (2)(b)(vii) of this section, WAC 246-240-078, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-201. The written (~~(certification under oath)~~ attestation) must be signed by a preceptor authorized user who meets the requirements in this section, or equivalent ((~~U.S.~~) NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in this subsection (2), must also have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-213 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).** Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) of this section and whose certification has been recognized by the department, (~~(the U.S. Nuclear Regulatory Commission)~~ NRC) or an agreement state. (Specialty boards whose certification process has been recognized by (~~(the commission)~~ NRC) or an agreement state will be posted on (~~(the)~~ NRC's web page at (~~(http://www.nrc.gov)~~ http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html); or

(2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(A) and (B), 246-240-216, or equivalent agreement state or ((~~U.S.~~) NRC requirements; or

(3)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

- (i) Radiation physics and instrumentation;
- (ii) Radiation protection;
- (iii) Mathematics pertaining to the use and measurement of radioactivity;
- (iv) Chemistry of radioactive material for medical use; and
- (v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or ((~~U.S.~~) NRC requirements. A supervising authorized user who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(A) or (B). The work experience must involve:

- (i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
  - (ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
  - (iii) Calculating, measuring, and safely preparing patient or human research subject dosages;
  - (iv) Using administrative controls to prevent a medical event involving the use of radioactive material;
  - (v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
  - (vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and
- (c) Has obtained written (~~(certification under oath)~~) attestation that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under WAC 246-240-201. The written (~~(certification under oath)~~) attestation must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or ((U.S.)) NRC requirements. A preceptor authorized user, who meets the requirement in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(A) or (B).

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-216 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).** Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries), to be a physician who:

- (1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) of this section and whose certification has been recognized by the department, ((the U.S.)) NRC or an agreement state. (Specialty boards whose certification process has been recognized by ((the commission)) NRC or an agreement state will be posted on ((the)) NRC's web page at ((http://www.nrc.gov)) <http://www.nrc.gov/materials/miau/med-use-tool-kit/spec-board-cert.html>); or
- (2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(B), or equivalent agreement state or ((U.S.)) NRC requirements; or
- (3)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:
  - (i) Radiation physics and instrumentation;
  - (ii) Radiation protection;
  - (iii) Mathematics pertaining to the use and measurement of radioactivity;

- (iv) Chemistry of radioactive material for medical use; and
- (v) Radiation biology; and
- (b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-216, or equivalent agreement state or ((U.S.)) NRC requirements. A supervising authorized user, who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(B).

The work experience must involve:

- (i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
  - (ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
  - (iii) Calculating, measuring, and safely preparing patient or human research subject dosages;
  - (iv) Using administrative controls to prevent a medical event involving the use of radioactive material;
  - (v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
  - (vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and
- (c) Has obtained written (~~(certification under oath)~~) attestation that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under WAC 246-240-201. The written (~~(certification under oath)~~) attestation must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-216, or equivalent agreement state or ((U.S.)) NRC requirements. A preceptor authorized user, who meets the requirements in WAC 246-240-210(2), must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(B).

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-219 Training for the parenteral administration of unsealed radioactive material requiring a written directive.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

- (1) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(C) or (D), or equivalent agreement state or ((U.S.)) NRC requirements; or
- (2) Is an authorized user under WAC 246-240-278 or 246-240-399, or equivalent agreement state or ((U.S.)) NRC requirements and who meets the requirements in subsection (4) of this section; or
- (3) Is certified by a medical specialty board whose certification process has been recognized by the ((U.S.)) NRC or an agreement state under WAC 246-240-278 or 246-240-

399, and who meets the requirements in subsection (4) of this section.

(4)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, ~~((and/))~~ or parenteral administration of any other radionuclide for which a written directive is required. The training must include:

- (i) Radiation physics and instrumentation;
- (ii) Radiation protection;
- (iii) Mathematics pertaining to the use and measurement of radioactivity;
- (iv) Chemistry of radioactive material for medical use; and
- (v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-219, or equivalent agreement state or ~~((U.S.))~~ NRC requirements, in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, ~~((and/))~~ or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in WAC 246-240-210 must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(C) ~~((and/))~~ or (D). The work experience must involve:

- (i) Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;
- (ii) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
- (iii) Calculating, measuring, and safely preparing patient or human research subject dosages;
- (iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- (v) Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and
- (vi) Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV ~~((and/))~~ or at least three cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(5) Has obtained written ~~((certification under oath))~~ attestation that the individual has satisfactorily completed the requirements in subsection (2) or (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written ~~((certification under oath))~~ attestation must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-219, or equivalent agreement state or ~~((U.S.))~~ NRC requirements. A preceptor authorized user, who meets the require-

ments in WAC 246-240-210, must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(C) ~~((and/))~~ or (D).

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-278 Training for use of manual brachytherapy sources.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under WAC 246-240-251 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, ~~((the U.S.))~~ NRC, or an agreement state. (Specialty boards whose certification process has been recognized by ~~((the commission))~~ NRC or an agreement state will be posted on ~~((the))~~ NRC's web page at ~~((http://www.nrc.gov.))~~ <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association;

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of high and low dose-rate brachytherapy; and

(c) Obtain written ~~((certification under oath))~~ attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-278 or equivalent ~~((U.S.))~~ NRC or agreement state requirements, that the individual has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in WAC 246-240-251; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

- (A) Radiation physics and instrumentation;
- (B) Radiation protection;
- (C) Mathematics pertaining to the use and measurement of radioactivity; and
- (D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-278 or equivalent agreement state or ~~((U.S.))~~ NRC requirements at a medical institution, involving:

- (A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- (B) Checking survey meters for proper operation;

(C) Preparing, implanting, and removing brachytherapy sources;

(D) Maintaining running inventories of material on hand;

(E) Using administrative controls to prevent a medical event involving the use of radioactive material;

(F) Using emergency procedures to control radioactive material; and

(b) Has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in WAC 246-240-078, 246-240-278 or equivalent ((U.S.)) NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a)(ii) of this subsection; and

(c) Has obtained written (~~(certification under oath)~~) attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-278 or equivalent agreement state or ((U.S.)) NRC requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) of this section, or (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under WAC 246-240-251.

AMENDATORY SECTION (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-281 Training for ophthalmic use of strontium-90.** Except as provided in WAC 246-240-078, the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user under WAC 246-240-278 or equivalent agreement state or ((U.S.)) NRC requirements; or

(2)(a) Has completed twenty-four hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity; and

(iv) Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals.

This supervised clinical training must involve:

(i) Examination of each individual to be treated;

(ii) Calculation of the dose to be administered;

(iii) Administration of the dose; and

(iv) Follow up and review of each individual's case history; and

(c) Has obtained written (~~(certification under oath)~~) attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-278, 246-240-281, or equivalent agreement state or ((U.S.)) NRC requirements, that the individual has satisfactorily completed the requirements in subsections (1) and (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-304 Training for use of sealed sources for diagnosis.** Except as provided in WAC 246-240-078, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under WAC 246-240-301 to be a physician, dentist, or podiatrist who:

(1) Is certified by a specialty board whose certification process includes all of the requirements in subsections (2) and (3) of this section and whose certification has been recognized by the department, ((the U.S.)) NRC, or an agreement state. (Specialty boards whose certification process has been recognized by ((the commission)) NRC or an agreement state will be posted on ((the)) NRC's web page at ((<http://www.nrc.gov>)) <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>); or

(2) Has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:

(a) Radiation physics and instrumentation;

(b) Radiation protection;

(c) Mathematics pertaining to the use and measurement of radioactivity;

(d) Radiation biology; and

(3) Has completed training in the use of the device for the uses requested.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-357 Installation, maintenance, adjustment, and repair.** (1) Only a person specifically licensed by the department, ((the U.S.)) NRC, or an agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source(s), reduce the shielding around the source(s), or compromise the radiation safety of the unit or the source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the department, ((the U.S.)) NRC, or an agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the department, ((the U.S.)) NRC, or an agreement state or an authorized medical physi-

cist shall install, replace, relocate, or remove a sealed source(s) contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units in accordance with WAC 246-240-605.

**AMENDATORY SECTION** (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-393 Five-year inspection for teletherapy and gamma stereotactic radiosurgery units.** (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the department, ~~((the U.S.))~~ NRC or an agreement state.

(3) A licensee shall keep a record of the inspection and servicing in accordance with WAC 246-240-632.

**AMENDATORY SECTION** (Amending WSR 11-03-068, filed 1/18/11, effective 2/18/11)

**WAC 246-240-399 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a sealed source for a use authorized under WAC 246-240-351 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, ~~((the U.S.))~~ NRC, or an agreement state. (Specialty boards whose certification process has been recognized by ~~((the))~~ NRC or an agreement state will be posted on ~~((the))~~ NRC's web page at ~~((http://www.nrc.gov.))~~ <http://www.nrc.gov/materials/miau/med-use/toolkit/spec-board-cert.html>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, high and low dose-rate brachytherapy, and external beam therapy; or

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-399 or equivalent agreement state or ~~((U.S.))~~ NRC requirements at a medical institution, involving:

(A) Reviewing full calibration measurements and periodic spot-checks;

(B) Preparing treatment plans and calculating treatment doses and times;

(C) Using administrative controls to prevent a medical event involving the use of radioactive material;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

(E) Checking and using survey meters; and

(F) Selecting the proper dose and how it is to be administered; and

(b) Has completed three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in WAC 246-240-078, 246-240-399 or equivalent ~~((U.S.))~~ NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a)(ii) of this subsection; and

(c) Has obtained written ~~((certification under oath))~~ attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) of this section, or (a) and (b), and (d) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written ~~((certification under oath))~~ attestation must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-399 or equivalent ~~((U.S.))~~ NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(d) Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

**AMENDATORY SECTION** (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-587 Records of molybdenum-99, strontium-82, and strontium-85 concentrations.** A licensee shall maintain a record of the molybdenum-99,

strontium-82, ~~((and/))~~ or strontium-85 concentration tests required by WAC 246-240-160(2) for three years.

(1) The record must include, for each measured elution of technetium-99m, the ratio of the measures expressed as kilobecquerels of molybdenum-99 per megabecquerel of technetium-99m (or microcuries of molybdenum per millicurie of technetium), the time and date of the measurement, and the name of the individual who made the measurement.

(2) For each measured elution of rubidium-82, the ratio of the measures expressed as kilobecquerels of strontium-82 per megabecquerel of rubidium-82 (or microcuries of strontium-82 per millicurie of rubidium), ~~((and/))~~ or kilobecquerels of strontium-85 per megabecquerel of rubidium-82 (or microcuries of strontium-85 per millicurie of rubidium), the time and date of the measurement, and the name of the individual who made the measurement.

**WSR 13-06-026**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket UT-120451—Filed February 27, 2013, 3:08 p.m.]

Supplemental Notice to WSR 13-01-068.

Preproposal statement of inquiry was filed as WSR 12-09-084.

Title of Rule and Other Identifying Information: WAC 480-120-251 Directory service, this rule making proposes modifications to, or the elimination of, the requirement that local exchange companies provide each customer a copy of a telephone directory for the customer's exchange area.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on April 11, 2013, at 1:30 p.m.

Date of Intended Adoption: April 11, 2013.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by March 29, 2013. Please include "Docket UT-120451" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by March 27, 2013, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal revises the existing rule to require local exchange carriers to distribute white pages telephone directories only to customers who request them. The proposal would minimize the burden on regulated carriers to print and distribute directories and would substantially reduce the amount of waste resulting from disposal of unwanted printed directories.

This supplemental CR-102 amends the proposal so that carriers are obligated only to provide electronic access to directory listings and must provide printed directories only to customers who request them. If carriers also distribute printed directories to customers who do not request them, the

rule would require that carriers not distribute a printed directory to customers who request not to receive them.

Reasons Supporting Proposal: Consumers primarily rely on the internet as a resource for telephone number listings, rendering unnecessary a requirement that companies distribute printed white pages directories except to those customers who request them. Eliminating distribution of unwanted directories also enhances environmental stewardship in cooperation with cities and municipalities by reducing the volume of paper waste that must be processed and disposed of.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: John Cupp, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1113; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not result in or impose more than minor costs. Because there will not be more than [a] minor increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

February 27, 2013

Steven V. King  
Acting Executive Director  
and Secretary

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-251 Directory ~~((service))~~ listings. ~~((1))~~**  
~~A local exchange company (LEC) must ensure that a telephone directory is regularly published for each local exchange it serves, listing the name, address (unless omission is requested), and primary telephone number for each customer who can be called in that local exchange and for whom subscriber list information has been provided.~~

~~(2) Any residential customer may request from the LEC a dual name primary directory listing that contains, in addition to the customer's surname, the customer's given name or initials (or combination thereof) and either one other person with the same surname who resides at the same address or a second name, other than surname, by which the customer is also known, including the married name of a person whose spouse is deceased.~~

~~(3) A LEC must provide each customer a copy of the directory for the customer's local exchange area. If the directory provided for in subsection (1) of this section does not include the published listing of all exchanges within the cus-~~

customer's local calling area, the LEC must, upon request, provide at no charge a copy of the directory or directories that contain the published listing for the entire local calling area.

(4) Telephone directories published at the direction of a LEC must be revised at least once every fifteen months, except when it is known that impending service changes require rescheduling of directory revision dates. To keep directories correct and up to date, companies may revise the directories more often than specified.

(5) Each LEC that publishes a directory, or contracts for the publication of a directory, must print an informational listing (LEC name and telephone number) when one is requested by any other LEC providing service in the area covered by the directory. The LEC to whom the request is made may impose reasonable requirements on the timing and format of informational listings, provided that these requirements do not discriminate between LECs.

(6) Telephone directories published at the direction of the LEC must include a consumer information guide that details the rights and responsibilities of its customer. The guide must describe the:

(a) Process for establishing credit and determining the need and amount for deposits;

(b) Procedure by which a bill becomes delinquent;

(c) Steps that must be taken by the company to discontinue service;

(d) Washington telephone assistance program (WTAP);

(e) Federal enhanced tribal lifeline program, if applicable; and

(f) Right of the customer to pursue any dispute with the company, including the appropriate procedures within the company and then to the commission by informal or formal complaint.) (1) Basic local exchange service includes access to directory listings comprised of the name, address, and primary telephone number for each customer that the local exchange company (LEC) serves in a local calling area unless the customer requests to exclude some or all of this information from the LEC's directory listings.

(2) A LEC must ensure that its basic local exchange service customers have access to directory listings for the customers' local calling area by making those listings available electronically via a document, data base, or link on the LEC's web site. The LEC also must distribute or arrange to distribute printed directory listings to all of the LEC's customers who request a printed directory. A LEC is not otherwise required to distribute a printed directory.

(3) If the LEC distributes or arranges for a third-party to distribute printed directory listings to the LEC's customers who have not requested a printed directory, the LEC must not distribute or arrange to distribute printed directory listings to any customer who requests not to receive a printed directory.

(4) A LEC must establish or arrange for reasonable means for its customers to request to exclude some or all of their information from the LEC's directory listings and to request to receive, or not to receive, a printed directory.

(5) The directory listings must be updated no less frequently than every fifteen months.

## WSR 13-06-032

### PROPOSED RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 28, 2013, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-096.

Title of Rule and Other Identifying Information: WAC 392-410-117 Temporary exemption from credit requirements. This rule allowed the office of superintendent of public instruction (OSPI) to grant waivers to high schools whose programs did not meet one hundred fifty hours of instruction (definition of a high school credit).

Hearing Location(s): OSPI, 600 Washington Street S.E., Wanamaker Conference Room, Olympia, WA 98504, on April 10, 2013, at 10:00 a.m.

Date of Intended Adoption: April 10, 2013.

Submit Written Comments to: Dan Newell, Assistant Superintendent, Secondary Education and Student Support, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail dan.newell@k12.wa.us, fax (360) 664-3575, by April 10, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by April 5, 2013, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are repealing WAC 392-410-117 Temporary exemption from credit requirements, as the Washington state board of education has redefined a high school credit not to include the one hundred fifty hours of instruction (performance or successful completion based on written district policy).

Since the Washington state board of education has changed the rule, the exemption allowed in WAC 392-410-117 is no longer needed.

Reasons Supporting Proposal: This WAC is no longer needed since the adoption of a change to the definition of a high school credit by the Washington state board of education.

Statutory Authority for Adoption: RCW 28A.655.180.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dan Newell, 600 Washington Street S.E., Olympia, WA, (360) 725-6175.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact on small business or school districts with the repeal of this WAC.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not needed.

February 28, 2013

Randy Dorn

Superintendent of  
Public Instruction

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-410-117 Temporary exemption from credit requirements.

**WSR 13-06-035**  
**WITHDRAWAL OF PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 1, 2013, 9:55 a.m.]

Please withdraw WSR 13-03-132. Significant new changes have been identified by stakeholders to WAC 181-79A-211. We will refile the proposal and amend the OTS document.

David Brenna  
 Senior Policy Analyst

**WSR 13-06-038**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed March 1, 2013, 4:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-500-0120 Medical assistance definitions—W, 182-503-0040 Washington apple health—Interview requirements, 182-503-0090 Washington apple health—Exceptions to rule, 182-503-0530 Citizenship and alien status—Definitions, 182-504-0005 Washington apple health—Retroactive certification period, 182-510-0001 Washington apple health—Supplemental security income (SSI) and associated categorically needy (CN), and 182-511-1060 Washington apple health—Health care for workers with disabilities (HWD)—Income standard based on the federal poverty guidelines.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000, on April 9, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 10, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on April 9, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 1, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administration and supervision of Washington's medicaid program (Washington apple health).

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

March 1, 2013

Kevin M. Sullivan  
 Rules Coordinator

NEW SECTION

**WAC 182-500-0120 Medical assistance definitions—W. "Washington apple health"** means the public health insurance programs for eligible Washington residents. Washington apple health is the name used in Washington state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs.

**"Washington Healthplanfinder"** is an online marketplace for individuals, families, and small businesses in Washington state to compare and enroll in health insurance coverage and gain access to tax credits, reduced cost sharing, and public programs such as Washington apple health.

NEW SECTION

**WAC 182-503-0040 Washington apple health—Interview requirements.** (1) An individual applying for Washington apple health (WAH) (as defined in WAC 182-500-0120) is not required to have an in-person interview to determine eligibility.

(2) The agency or its designee may contact an individual by phone or in writing to gather any additional information that is needed to make an eligibility determination.

(3) A phone or in-person interview is required to determine initial financial eligibility for WAH long-term care services.

(4) The interview requirement described in subsection (3) of this section may be waived if the applicant is unable to comply:

- (a) Due to his or her medical condition; or
- (b) Because the applicant does not have a family member or another individual that is able to conduct the interview on his or her behalf.

#### NEW SECTION

**WAC 182-503-0090 Washington apple health—**  
**Exceptions to rule.** (1) An individual may request an exception to a Washington apple health financial eligibility rule in Title 182 WAC. An individual must request an exception to rule (ETR) within ninety calendar days of the agency action with which the individual disagrees. The individual or the individual's representative may request an ETR orally or in writing. The request must:

- (a) Identify the rule for which an exception is being requested;
- (b) State what the individual is requesting; and
- (c) Describe how the request meets subsection (2) of this section.

(2) The agency director or designee has the discretion to grant an ETR if he or she determines that the individual's circumstances satisfy the conditions below:

- (a) The exception would not contradict a specific provision of federal or state law; and
- (b) The individual's situation differs from the majority; and
- (c) It is in the interest of the overall economy and the individual's welfare, and:
  - (i) It increases opportunity for the individual to function effectively; or
  - (ii) The individual has an impairment or limitation that significantly interferes with the usual procedures required to determine eligibility and payment.

(3) Individuals cannot appeal ETR decisions under chapter 182-526 WAC.

(4) An individual is mailed a decision in writing within ten calendar days when agency staff:

- (a) Approve or deny an ETR request; or
  - (b) Request more information.
- (5) If the ETR is approved, the notice includes information on the approval period.

(6) The agency designates staff at the aging and disability services administration (ADSA) to process all ETRs specifically relating to long-term care programs described in Title 182 WAC.

(7) This section does not apply to requests that the agency pay for noncovered medical or dental services or related equipment. WAC 182-501-0160 applies to such requests.

#### NEW SECTION

**WAC 182-503-0530 Citizenship and alien status—**  
**Definitions.** For the purposes of determining an individual's citizenship and alien status for health care coverage, the following definitions apply:

(1) **Lawfully present** are immigrants or noncitizens that have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services (CIS) to stay or live in the U.S.

(2) **Qualified aliens** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under Immigration and Nationality Act (INA) Section 207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Laotian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964, to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking, who according to federal law are:

(A) Individuals who have been certified or approved as victims of trafficking by the federal office of refugee resettlement.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

(iii) Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under INA Section 101 (a)(27).

(c) Individuals who have been granted asylum under INA Section 208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried child under age twenty-one of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned twenty-one years old. Children of abused persons who meet

the conditions above retain their "qualified alien" status even after they turn twenty-one years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA Section 212 (d)(5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA Section 243(h) or 241 (b)(3).

(h) Individuals who were admitted into the U.S. as conditional entrants under INA Section 203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **Nonqualified aliens** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (2) of this section. Nonqualified aliens include, but are not limited to:

(a) Citizens of Marshall Islands, Micronesia or Palau;

(b) Immigrants paroled into the U.S. for a period of one year or less;

(c) Immigrants granted temporary protected status;

(d) Abused aliens who are a relative of a U.S. citizen with an approved I-130 petition but not meeting the other requirements of battered immigrants, as described in WAC 182-503-0530;

(e) Abused aliens who have self-petitioned under VAWA but not yet received "Notice of Prima Facie" eligibility as described in WAC 182-503-0530;

(f) Applicants for adjustment of status, asylum, cancellation of removal, suspension of deportation or withholding of deportation or removal;

(g) Cancellation of removal, deferred action of suspension of deportation granted (note: If a person is granted cancellation of removal or suspension of deportation based on having been abused or granted deferred action based on an approved self-petition as an abused alien they are a "qualified alien");

(h) Deferred enforced departure granted;

(i) Family Unity granted;

(j) K, S, U, or V statuses, designated on a person's visa, allow holders to work and eventually adjust to lawful permanent resident (LPR) status;

(k) Lawful temporary residents under the amnesty program of the Immigration Reform and Control Act (IRCA), including those admitted under INA Sections 210 (special agricultural workers) and 245(a);

(l) Order of suspension granted;

(m) Residing in the U.S. since prior to January 1, 1972;

(n) Eligible to petition as special immigrant juveniles. These are juveniles who have been declared a "dependent of the state" and eligible for long-term foster care due to abuse, neglect, or abandonment;

(o) Stay or deportation granted;

(p) Voluntary departure granted - Definite or indefinite time; or

(q) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also non-qualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **Undocumented aliens** are noncitizens without a lawful immigration status as defined in subsection (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(5) **U.S. citizens** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per Title 8, Subchapter III, Section 1401 of the United States Code.

(e) Individuals who turn eighteen years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age eighteen per INA Section 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA Section 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals who turned eighteen before February 27, 2001, would have automatically become a citizen if, while the individual was still under eighteen, he or she became a lawful permanent resident and both his or her parents naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(6) **U.S. nationals** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

#### NEW SECTION

**WAC 182-504-0005 Washington apple health—Retrospective certification period.** (1) The medicaid agency

approves a retroactive Washington apple health (WAH) certification period for the three months immediately before the month of application when an individual:

(a) Requests retroactive WAH on his or her application, within the certification period following the retroactive period, or before the determination of benefits and any appeal process is final;

(b) Would have been eligible for WAH for any or all of the three months if he or she had applied during the retroactive period; and

(c) The individual received covered medical services as described in WAC 182-501-0060 and 182-501-0065.

(2) When an individual is eligible only during the three-month retroactive certification period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months immediately before the month of application, but no earlier than the month of conception. Eligibility continues as described in WAC 182-504-0015(3).

(b) A child is eligible for categorically needy (CN) WAH as described in WAC 182-505-0210 (1) through (5) and (7) in at least one of the three months immediately before the month of application. Eligibility after the retroactive period continues as described in WAC 182-504-0015(11).

(3) An individual applying for the medically needy (MN) spenddown program may be eligible for a retroactive certification period as described in WAC 182-504-0020.

(4) An individual applying for a medicare savings program may be eligible for a retroactive certification period as described in WAC 182-504-0025.

#### NEW SECTION

**WAC 182-510-0001 Washington apple health—Supplemental security income (SSI) and associated categorically needy (CN).** (1) Supplemental security income (SSI) is a federal cash benefit administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. The SSI program replaces state programs for the aged, blind and disabled individuals beginning January 1974. An individual who received state assistance in December 1973 who became eligible for SSI in January 1974 is considered a grandfathered client by the medicaid agency, and a mandatory income level (MIL) client by SSI. The individual must continue to meet the definition of blind or disabled that was in effect under the state plan in December 1973. These definitions can be found in the SSA program operations manual system (POMS), see <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>. Other definitions related to SSI eligibility are described in WAC 182-500-0100.

(2) An essential person is an individual who is needed in the home to care for an SSI recipient. An essential person is eligible for categorically needy (CN) Washington apple health (WAH) as long as he or she has lived continuously with the eligible person since January 1974.

(3) An ineligible spouse is not eligible for SSI-related CN WAH. An ineligible spouse must have his or her eligibility for WAH determined separately in accordance with SSI-related medically needy (MN) rules in WAC 182-519-0100.

(4) When an individual receives SSI, the agency accepts SSA's determination of medicaid entitlement. The individual is eligible for CN WAH without submitting an application as long as he or she:

(a) Remains entitled to an SSI cash payment;

(b) Is no longer entitled to an SSI cash payment, but SSA is in the process of determining eligibility under Section 1619(b) of the Social Security Act; or

(c) Currently has 1619(b) status as described in WAC 182-512-0880(3).

(5) An SSI recipient may be terminated from CN WAH when he or she:

(a) Does not provide the agency with information necessary for the agency to determine if he or she has other medical insurance; or

(b) Does not assign the right to recover insurance funds to the agency as required in WAC 182-503-0540.

(6) When SSA stops an individual's SSI cash payment for one of the reasons listed in (a), (b), or (c) of this subsection, CN WAH eligibility continues.

(a) The individual's countable income exceeds the SSI income standard due solely to the annual cost-of-living adjustment (COLA) as described in WAC 182-512-0880(1);

(b) The individual is a "deemed" eligible SSI recipient on the basis of eligibility for a special income disregard described in WAC 182-512-0880; or

(c) The individual has an appeal of an SSA termination pending which has not yet resulted in a final determination.

(7) If an individual's SSI cash payment stops due to an SSA determination that the individual is no longer disabled, and any appeal of this determination has resulted in a final decision, the agency:

(a) Redetermines eligibility for all other WAH programs that are not based on receipt of SSI; and

(b) Continues CN WAH until the agency completes the redetermination process described in WAC 182-504-0125.

(8) If an individual's SSI cash payment stops for a reason not addressed elsewhere in this section, the agency considers the individual to meet disability requirements through the SSA's original disability review date. The agency:

(a) Redetermines eligibility for other WAH programs, which may or may not be based on disability; and

(b) Continues CN WAH until the agency completes the redetermination process described in WAC 182-504-0125.

#### NEW SECTION

**WAC 182-511-1060 Washington apple health—Health care for workers with disabilities (HWD)—Income standard based on the federal poverty guidelines.**

(1) The federal poverty levels (FPL) amounts, also known as poverty guidelines, are issued by the federal Department of Health and Human Services each year in the Federal Register and are generally found at <http://aspe.hhs.gov/poverty/index.shtml>.

(2) If the FPL amounts change from one calendar year to the next, the net income standard for the Washington apple health for workers with disabilities (HWD) program changes on the first of April each year based on that calendar year's poverty guidelines.

- (3) The net income standard for HWD is two hundred twenty percent of the poverty guideline.
- (4) There is no test for resources for the HWD program.

**WSR 13-06-049**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 5, 2013, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-068.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): Labor and Industries, 7273 Linder-son Way S.W., Tumwater, WA 98501, on April 9, 2013, at 10:00 a.m.; at the Tukwila Community Center, Meeting Room A, 12424 42nd Avenue South, Tukwila, WA 98168, on April 10, 2013, at 10:00 a.m.; and at the Spokane Center-Place Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on April 11, 2013, at 10:00 a.m.

Date of Intended Adoption: May 1, 2013.

Submit Written Comments to: Doug Stewart, P.O. Box 44140, Olympia, WA 98504-4140, e-mail doug.stewart@lni.wa.gov, fax (360) 902-4799, by 5 p.m. on April 11, 2013.

Assistance for Persons with Disabilities: Contact office of information and assistance by March 25, 2013, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A classification study was conducted on land surveying businesses. It was determined that land surveyors report approximately ten percent of the total hours for risk classification 4901; which also includes consulting engineers and geologists. Land surveyors file approximately forty-two percent of the claims. This rule filing is necessary to ensure land surveying businesses reflect their degree of hazard.

WAC 296-17-895, update the industrial insurance rate table.

WAC 296-17-901, assign a hazard group to new risk classification created.

WAC 296-17A-1006-00 Land surveying services, N.O.C., create a new classification to cover those businesses currently reporting in classification WAC 296-17A-4901-17.

WAC 296-17A-4901-17 Land surveying services, N.O.C., inactivate this subclassification.

Reasons Supporting Proposal: Land surveyors are not paying a rate that reflects the hazards associated with the type of work within these businesses. This rule filing is necessary to better align land surveying businesses with like degrees of hazard.

Statutory Authority for Adoption: RCW 51.16.035 and 51.04.020(1).

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Chamberlain, Tumwater, Washington, (360) 902-4772; Implementation: Doug Stewart, Tumwater, Wash-ington, (360) 902-4826; and Enforcement: Vickie Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case, the agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. In this case, the agency is exempt from conduct-ing a cost-benefit analysis since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.328 (5)(b).

March 5, 2013  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

**WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry.** Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

<b>Base Rates Effective January 1, 2013</b>			
<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
0101	2.4521	0.0544	0.8672
0103	2.6794	0.0592	1.1423
0104	1.4858	0.0329	0.6091
0105	1.9690	0.0434	0.9560
0107	1.8473	0.0410	0.6658
0108	1.4858	0.0329	0.6091
0112	1.0337	0.0228	0.4616
0201	4.0605	0.0907	1.0336
0202	5.0794	0.1126	1.8737
0210	1.6933	0.0376	0.5936
0212	1.9761	0.0438	0.7294
0214	2.2407	0.0497	0.8127
0217	1.7454	0.0386	0.6949
0219	1.8077	0.0400	0.6968
0301	0.9934	0.0218	0.5550
0302	3.6601	0.0815	1.1392
0303	2.7861	0.0619	0.9609
0306	1.5788	0.0350	0.5780
0307	1.3218	0.0292	0.5398

Base Rates Effective January 1, 2013				Base Rates Effective January 1, 2013			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
0308	0.6992	0.0152	0.4697	1305	0.6926	0.0152	0.3542
0403	2.7006	0.0598	1.0958	1401	0.2750	0.0060	0.1766
0502	2.0864	0.0463	0.7219	1404	1.1914	0.0261	0.6895
0504	2.4230	0.0533	1.1955	1405	1.0249	0.0225	0.5500
0507	4.5735	0.1007	2.2194	1407	0.6643	0.0145	0.4439
0508	3.1055	0.0692	0.8958	1501	0.9245	0.0204	0.4241
0509	2.7067	0.0602	0.8784	1507	0.8642	0.0190	0.4307
0510	2.9031	0.0642	1.2429	1701	1.1763	0.0260	0.5330
0511	2.3957	0.0531	0.8983	1702	3.1012	0.0692	0.8394
0512	2.2743	0.0504	0.8712	1703	1.7348	0.0388	0.4136
0513	1.2434	0.0275	0.4905	1704	1.1763	0.0260	0.5330
0514	2.7645	0.0612	1.1382	1801	0.6773	0.0149	0.3276
0516	2.4353	0.0540	0.9330	1802	1.1150	0.0245	0.5657
0517	3.4633	0.0765	1.4857	2002	1.1335	0.0248	0.6412
0518	2.3260	0.0517	0.7983	2004	1.0274	0.0225	0.5725
0519	2.7303	0.0604	1.1198	2007	0.7879	0.0172	0.4681
0521	0.8335	0.0184	0.3552	2008	0.5148	0.0113	0.2863
0601	0.9317	0.0206	0.3622	2009	0.4719	0.0103	0.3097
0602	1.1507	0.0256	0.3819	2101	1.0118	0.0221	0.6393
0603	1.4680	0.0326	0.4980	2102	0.8862	0.0194	0.4882
0604	1.5115	0.0331	0.8807	2104	0.3390	0.0073	0.3202
0606	0.7953	0.0175	0.4260	2105	0.7810	0.0171	0.4580
0607	1.0208	0.0225	0.4840	2106	0.6615	0.0145	0.4066
0608	0.4780	0.0105	0.2288	2201	0.3285	0.0072	0.2061
0701	3.4398	0.0770	0.7428	2202	1.0855	0.0239	0.5671
0803	0.7238	0.0159	0.3855	2203	0.6037	0.0131	0.4068
0901	2.3260	0.0517	0.7983	2204	0.3285	0.0072	0.2061
1002	1.3782	0.0304	0.6488	2401	0.7058	0.0156	0.3005
1003	1.1253	0.0247	0.5731	2903	0.8998	0.0197	0.5404
1004	0.8381	0.0185	0.3485	2904	0.9947	0.0219	0.5054
1005	13.3656	0.2965	4.8837	2905	0.8652	0.0189	0.5371
<u>1006</u>	<u>0.0970</u>	<u>0.0021</u>	<u>0.0445</u>	2906	0.5070	0.0111	0.3180
1007	0.5638	0.0125	0.2066	2907	0.7312	0.0160	0.4213
1101	1.1185	0.0246	0.5476	2908	1.6124	0.0355	0.8226
1102	2.2770	0.0504	0.8926	2909	0.5415	0.0118	0.3339
1103	1.8916	0.0418	0.8024	3101	1.0553	0.0232	0.5163
1104	0.8531	0.0187	0.5089	3102	0.3638	0.0080	0.2020
1105	1.2801	0.0283	0.5214	3103	0.7431	0.0163	0.3774
1106	0.4049	0.0088	0.2780	3104	0.9171	0.0202	0.4514
1108	0.8625	0.0189	0.4641	3105	1.0010	0.0219	0.5872
1109	2.1887	0.0482	1.0581	3303	0.6232	0.0137	0.3421
1301	0.8129	0.0180	0.3556	3304	0.6318	0.0137	0.4528
1303	0.2901	0.0064	0.1581	3309	0.5745	0.0126	0.2852
1304	0.0413	0.0009	0.0202	3402	0.7259	0.0160	0.3758

Base Rates Effective January 1, 2013				Base Rates Effective January 1, 2013			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
3403	0.2970	0.0065	0.1538	4304	1.1888	0.0258	0.8256
3404	0.6549	0.0144	0.3690	4305	1.7574	0.0389	0.7249
3405	0.3833	0.0084	0.2281	4401	0.5558	0.0121	0.3632
3406	0.3337	0.0073	0.2219	4402	1.1152	0.0244	0.6306
3407	1.2606	0.0278	0.5470	4404	0.6912	0.0151	0.4303
3408	0.3102	0.0068	0.1724	4501	0.2389	0.0052	0.1741
3409	0.2003	0.0044	0.1293	4502	0.0580	0.0013	0.0369
3410	0.2728	0.0059	0.1950	4504	0.1528	0.0033	0.1082
3411	0.8249	0.0182	0.3686	4601	1.1025	0.0242	0.5798
3412	0.9685	0.0214	0.3814	4802	0.4275	0.0093	0.2821
3414	0.9173	0.0202	0.4644	4803	0.3283	0.0070	0.2961
3415	1.2609	0.0278	0.5903	4804	0.6222	0.0135	0.4387
3501	1.5004	0.0330	0.7564	4805	0.3836	0.0083	0.2743
3503	0.3760	0.0081	0.3036	4806	0.0812	0.0018	0.0587
3506	1.4096	0.0312	0.5345	4808	0.6253	0.0136	0.3998
3509	0.4917	0.0107	0.3347	4809	0.3903	0.0085	0.2898
3510	0.4659	0.0102	0.2789	4810	0.1708	0.0037	0.1405
3511	0.8664	0.0190	0.4544	4811	0.4127	0.0089	0.3387
3512	0.4810	0.0105	0.3283	4812	0.4929	0.0107	0.3199
3513	0.6992	0.0152	0.4776	4813	0.2036	0.0044	0.1518
3602	0.1559	0.0034	0.0947	4900	0.2798	0.0062	0.1004
3603	0.6534	0.0143	0.3942	4901	0.0970	0.0021	0.0445
3604	0.9929	0.0216	0.6886	4902	0.1733	0.0038	0.0927
3605	0.7860	0.0173	0.3781	4903	0.2183	0.0048	0.1293
3701	0.3638	0.0080	0.2020	4904	0.0321	0.0007	0.0216
3702	0.6261	0.0137	0.3455	4905	0.4431	0.0095	0.3763
3708	0.8849	0.0195	0.4348	4906	0.1327	0.0029	0.0726
3802	0.2778	0.0061	0.1716	4907	0.0729	0.0016	0.0484
3808	0.6351	0.0140	0.2744	4908	0.1171	0.0025	0.1004
3901	0.1860	0.0040	0.1496	4909	0.0496	0.0010	0.0561
3902	0.5808	0.0126	0.4031	4910	0.6420	0.0141	0.3581
3903	1.4019	0.0305	0.9902	4911	0.0912	0.0020	0.0497
3905	0.1657	0.0036	0.1405	5001	14.2821	0.3172	4.9189
3906	0.5958	0.0130	0.3978	5002	0.8855	0.0195	0.4383
3909	0.4312	0.0094	0.2886	5003	3.5579	0.0792	1.1030
4002	1.9643	0.0435	0.7829	5004	1.1090	0.0243	0.6096
4101	0.4891	0.0107	0.2593	5005	1.1812	0.0261	0.4763
4103	0.7331	0.0160	0.4412	5006	2.3416	0.0520	0.7925
4107	0.2271	0.0050	0.1273	5101	1.4077	0.0311	0.6131
4108	0.2651	0.0058	0.1598	5103	1.0949	0.0238	0.7413
4109	0.2818	0.0062	0.1596	5106	1.0949	0.0238	0.7413
4201	1.1239	0.0249	0.4075	5108	1.1334	0.0248	0.7066
4301	0.8649	0.0188	0.5681	5109	0.8679	0.0192	0.3809
4302	0.9936	0.0218	0.5499	5201	0.5499	0.0121	0.2825

Base Rates Effective January 1, 2013				Base Rates Effective January 1, 2013			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
5204	1.5391	0.0340	0.6890	6409	1.0812	0.0239	0.4915
5206	0.5550	0.0122	0.2626	6410	0.4269	0.0094	0.2441
5207	0.1834	0.0040	0.1434	6501	0.1945	0.0042	0.1261
5208	1.0405	0.0228	0.6152	6502	0.0422	0.0009	0.0263
5209	1.0261	0.0226	0.5134	6503	0.1137	0.0025	0.0476
5300	0.1707	0.0038	0.0896	6504	0.4536	0.0098	0.3737
5301	0.0498	0.0011	0.0296	6505	0.1447	0.0031	0.1381
5302	0.0217	0.0005	0.0110	6506	0.1519	0.0033	0.1040
5305	0.0745	0.0016	0.0504	6509	0.4253	0.0092	0.3297
5306	0.0625	0.0014	0.0446	6510	0.6737	0.0149	0.2928
5307	1.0113	0.0223	0.4561	6511	0.4844	0.0105	0.3347
5308	0.1306	0.0028	0.0896	6512	0.1963	0.0043	0.1060
6103	0.0976	0.0021	0.0835	6601	0.2750	0.0060	0.1766
6104	0.5314	0.0116	0.3263	6602	0.6545	0.0142	0.4540
6105	0.5759	0.0127	0.2671	6603	0.4433	0.0097	0.2623
6107	0.1740	0.0037	0.1513	6604	0.1073	0.0023	0.0736
6108	0.5734	0.0125	0.4054	6605	0.5161	0.0112	0.3468
6109	0.1519	0.0033	0.0813	6607	0.2010	0.0044	0.1308
6110	0.8459	0.0185	0.4813	6608	0.9685	0.0216	0.2680
6120	0.4528	0.0100	0.2245	6620	4.9459	0.1092	2.1603
6121	0.5110	0.0112	0.2600	6704	0.1750	0.0038	0.1081
6201	0.4640	0.0102	0.2315	6705	1.0472	0.0226	0.8269
6202	0.9320	0.0204	0.5342	6706	0.3749	0.0081	0.2726
6203	0.1224	0.0026	0.1164	6707	5.7200	0.1231	4.9261
6204	0.1641	0.0036	0.1155	6708	9.2814	0.1975	9.6979
6205	0.3159	0.0069	0.2061	6709	0.3464	0.0075	0.2409
6206	0.3115	0.0068	0.2002	6801	1.1170	0.0247	0.4887
6207	1.5595	0.0337	1.2587	6802	0.7898	0.0173	0.4896
6208	0.3017	0.0065	0.2515	6803	1.4287	0.0318	0.4212
6209	0.3984	0.0087	0.2744	6804	0.4717	0.0103	0.2904
6301	0.2032	0.0045	0.0782	6809	6.4856	0.1405	4.9240
6303	0.1074	0.0024	0.0614	6901	0.0000	0.0000	0.0660
6304	0.3904	0.0084	0.3128	6902	1.5931	0.0354	0.5527
6305	0.1324	0.0029	0.0958	6903	11.3132	0.2508	4.2662
6306	0.4339	0.0095	0.2345	6904	0.8761	0.0194	0.3551
6308	0.0955	0.0021	0.0531	6905	0.6698	0.0148	0.3244
6309	0.2859	0.0062	0.1782	6906	0.0000	0.0000	0.3244
6402	0.3363	0.0073	0.2339	6907	1.6832	0.0369	0.9362
6403	0.2007	0.0043	0.1592	6908	0.6082	0.0133	0.3311
6404	0.3352	0.0073	0.2412	6909	0.1499	0.0033	0.1009
6405	0.8424	0.0186	0.4046	7100	0.0442	0.0010	0.0270
6406	0.1486	0.0032	0.1143	7101	0.0347	0.0008	0.0184
6407	0.3394	0.0074	0.2217	7102	4.0666	0.0858	4.8031
6408	0.6453	0.0142	0.3347	7103	1.0239	0.0226	0.4723

Base Rates Effective January 1, 2013				Risk Classification	Hazard Group
Class	Accident Fund	Stay at Work	Medical Aid Fund		
7104	0.0422	0.0009	0.0279	201	9
7105	0.0333	0.0007	0.0210	202	9
7106	0.3079	0.0067	0.2269	210	8
7107	0.2901	0.0063	0.2355	212	9
7108	0.2335	0.0050	0.1904	214	8
7109	0.1859	0.0040	0.1285	217	7
7110	0.4966	0.0110	0.2159	219	7
7111	0.7247	0.0161	0.2755	301	4
7112	0.9217	0.0201	0.6107	302	9
7113	0.4995	0.0109	0.3477	303	9
7114	0.7211	0.0155	0.6031	306	8
7115	0.6305	0.0137	0.4754	307	7
7116	0.8409	0.0184	0.5029	308	3
7117	1.7056	0.0373	0.9913	403	6
7118	1.9595	0.0428	1.2244	502	8
7119	1.9361	0.0424	1.1135	504	9
7120	8.6413	0.1896	4.7038	507	8
7121	8.0855	0.1774	4.4099	508	9
7122	0.5889	0.0128	0.4189	509	9
7200	2.1784	0.0482	0.9040	510	7
7201	2.6166	0.0579	1.0803	511	7
7202	0.0456	0.0010	0.0198	512	9
7203	0.1357	0.0029	0.1504	513	6
7204	0.0000	0.0000	0.0000	514	7
7205	0.0000	0.0000	0.0000	516	8
7301	0.5894	0.0129	0.3450	517	9
7302	1.2427	0.0271	0.7998	518	9
7307	0.5780	0.0126	0.3837	519	9
7308	0.4811	0.0104	0.3633	521	7
7309	0.3242	0.0070	0.2638	540	8
7400	2.6166	0.0579	1.0803	541	9
				550	9
				551	9
				601	7
				602	7
				603	9
				604	7
				606	4
				607	6
				608	7
				701	9
				803	5
				901	8
				1002	8
				1003	7
				1004	6
				1005	8
Risk Classification					Hazard Group
101					9
103					8
104					8
105					5
107					9
108					8
112					7

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17-901 Risk classification hazard group table.** Effective November 19, 2010.

<b>Risk Classification</b>	<b>Hazard Group</b>	<b>Risk Classification</b>	<b>Hazard Group</b>
<u>1006</u>	<u>6</u>	2909	4
1007	7	3101	6
1101	5	3102	6
1102	8	3103	6
1103	8	3104	6
1104	3	3105	5
1105	7	3303	3
1106	5	3304	3
1108	5	3309	6
1109	6	3402	6
1301	2	3403	6
1303	3	3404	5
1304	5	3405	3
1305	4	3406	1
1401	9	3407	6
1404	3	3408	1
1405	1	3409	1
1407	4	3410	2
1501	5	3411	6
1507	5	3412	8
1701	7	3414	6
1702	9	3415	9
1703	9	3501	6
1704	7	3503	3
1801	9	3506	7
1802	5	3509	1
2002	6	3510	2
2004	4	3511	6
2007	6	3512	3
2008	6	3513	8
2009	3	3602	4
2101	5	3603	4
2102	3	3604	7
2104	2	3605	5
2105	2	3701	5
2106	4	3702	3
2201	6	3708	5
2202	5	3802	3
2203	2	3808	7
2204	6	3901	1
2401	1	3902	4
2903	4	3903	6
2904	6	3905	1
2905	3	3906	4
2906	4	3909	3
2907	3	4002	7
2908	7	4101	5

<b>Risk Classification</b>	<b>Hazard Group</b>	<b>Risk Classification</b>	<b>Hazard Group</b>
4103	2	5106	2
4107	6	5108	3
4108	3	5109	6
4109	6	5201	4
4201	6	5204	8
4301	4	5206	6
4302	4	5207	2
4304	6	5208	4
4305	5	5209	6
4401	6	5300	2
4402	2	5301	3
4404	5	5302	5
4501	1	5305	1
4502	5	5306	1
4504	1	5307	4
4601	5	5308	1
4802	7	6103	1
4803	2	6104	2
4804	2	6105	6
4805	2	6107	1
4806	5	6108	1
4808	6	6109	4
4809	3	6110	5
4810	3	6120	5
4811	3	6121	5
4812	2	6201	7
4813	3	6202	6
4900	9	6203	1
4901	6	6204	2
4902	3	6205	4
4903	1	6206	3
4904	3	6207	6
4905	2	6208	2
4906	2	6209	3
4907	4	6301	8
4908	2	6303	5
4909	3	6304	1
4910	6	6305	1
4911	6	6306	4
5001	9	6308	2
5002	3	6309	3
5003	9	6402	1
5004	8	6403	1
5005	9	6404	3
5006	9	6405	5
5101	4	6406	1
5103	3	6407	3

<u>Risk Classification</u>	<u>Hazard Group</u>	<u>Risk Classification</u>	<u>Hazard Group</u>
6408	4	7106	3
6409	6	7107	2
6410	3	7108	4
6501	1	7109	4
6502	4	7110	5
6503	5	7111	4
6504	1	7112	4
6505	1	7113	3
6506	2	7114	3
6509	2	7115	3
6510	8	7116	8
6511	3	7117	3
6512	6	7118	7
6601	4	7119	6
6602	5	7120	9
6603	4	7121	9
6604	1	7122	5
6605	1	7200	3
6607	4	7201	5
6608	9	7202	6
6620	1	7203	1
6704	2	7301	6
6705	2	7302	7
6706	6	7307	5
6707	1	7308	1
6708	8	7309	2
6709	2	7400	6
6801	3		
6802	2		
6803	9		
6804	3		
6809	2		
6901	1		
6902	9		
6903	9		
6904	1		
6905	1		
6906	1		
6907	4		
6908	4		
6909	2		
7100	7		
7101	8		
7102	3		
7103	4		
7104	3		
7105	3		

The following classes have no hazard group assigned to them

- 6614
- 6615
- 6616
- 6617
- 6618
- 7204
- 7205

NEW SECTION

**WAC 296-17A-1006 Classification 1006.**

**1006-00 Land surveying services, N.O.C.**

**Applies to** establishments engaged in providing professional land surveying services not covered by another classification (N.O.C.).

**Work in this rate classification includes,** but is not limited to:

- Measuring the size and physical characteristics of earth surfaces to determine precise location and measurements of points, elevations, lines, areas, contours and boundaries; and

- Performing marine, mine, forestry, geological and photogrammetric surveys which utilize sophisticated instruments and techniques, including aerial photography.

Field data collected by surveyors may be used to produce maps, architectural and civil engineering plans and drawings. Maps and drawings may be produced by drafters who plot out the field data by hand or by using computer-aided drafting programs.

**What activities are not included in this classification?**

- Draftsmen whose duties are limited to office work; if all conditions of the general reporting rules governing standard exception employees have been met, they may be reported separately in classification 4904; and
- Surveyors employed by construction companies or other types of businesses who are to be reported separately in the applicable classification for those businesses.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-4901 Classification 4901.**

**4901-00 Consulting engineering  
Architectural services, N.O.C.**

Applies to establishments engaged in providing consulting engineering services, construction management or consulting services, or architectural services not covered by another classification (N.O.C.). Engineers consult with and give technical advice to clients through the use of plans, maps, charts, specifications or other media. They may specialize in particular fields of endeavor such as aeronautical, chemical, civil, electrical, industrial, marine, mechanical or structural engineering. Engineers may research, design and develop a plan, a part, a piece of equipment, or a structure and may also build prototypes and models. Architects research, plan and design building projects for clients, applying knowledge of design, construction procedures, zoning and building codes, and building materials. They may enlist the services of engineers to provide specialized technical services or to solve specific problems. Architects may specialize in certain types of facilities such as hotels, hospitals, or industrial plants, or in the restoration of older structures, or may confine their practice to residential work. They also may be involved in the design of transportation facilities, public assembly complexes, marine or public utility projects. This classification includes employees of engineering or architectural services who perform surveys or who act as project managers or project superintendents for their employer's engineering or architectural projects. Businesses which specialize in offering construction management and/or consulting services, which are not involved in designing, engineering, or any of the actual construction activities, are also included in this classification.

This classification excludes draftsmen whose duties are limited to office work, who may be reported separately in classification 4904 provided the conditions set forth in the standard exception rule have been met, and the engineering and architectural staff of construction companies or other types of businesses who are to be reported in the classifications applicable for those businesses.

*Special note:* When assigning classifications 4901 or 1007, care must be taken to look beyond the words "consulting" or "engineering" to determine the actual nature of the activities being performed.

**4901-16 Geologists, N.O.C.**

Applies to establishments engaged in providing geological services, including oil or gas geologists or scouts and lease buyers performing work similar to oil geologists, not covered by another classification. Geologists study the composition, structure, and history of the earth's crust to identify and determine the sequence of processes affecting the development of the earth. By applying knowledge of chemistry, physics, biology and mathematics to explain these phenomena, they help locate mineral, geothermal, petroleum, and underground water resources. They will consult with and give technical advice to clients based on their findings. Projects may include, but are not limited to, landslide analysis and correction, rock slope design, rock fall mitigation and control, and soil cut and embankment design. They also prepare geologic reports and maps, interpret research data, recommend further study or action, and may participate in environmental studies. Duties of oil or gas geologists or scouts and lease buyers include, but are not limited to, reviewing court records, interviewing lease holders, securing data for prospective oil or gas producing land, as well as procuring core or shale samples at drilling locations for analyzing. The oil or gas geologist also may explore and chart stratigraphic arrangement and structure of the earth to locate gas and oil deposits, evaluate results of geophysical prospecting, prepare maps and diagrams indicating probable deposits of gas and oil, as well as estimate oil reserves in proven or prospective fields and visit drilling sites. Scouts keep the client company informed of events in their region, attend local meetings, and report the findings on work.

This classification excludes geophysical exploration which is to be reported separately in classification 1007; seismic geophysical exploration which is to be reported separately in classification 0103; and geologists or scouts of a drilling or construction contractor who are to be reported separately in the classification applicable to the employer's business.

*Special note:* When assigning classifications 4901-16, geologists, 1007-08, geophysical exploration, and 0103, seismic geophysical exploration, care must be taken to look beyond the word "geologist" to determine the actual nature of the activities being performed.

~~((4901-17 Land surveying services, N.O.C.~~

~~Applies to establishments engaged in providing professional land surveying services not covered by another classification (N.O.C.). Land surveyors measure the size and physical characteristics of earth surfaces to determine precise location and measurements of points, elevations, lines, areas, contours and boundaries for private, public, and commercial applications. Some firms also perform marine, mine, forestry, geological and photogrammetric surveys which utilize sophisticated instruments and techniques, including aerial photography. The field data collected by surveyors may be used to produce maps and architectural and civil engineering plans and drawings. Maps and drawings may be produced by~~

drafters who plot out the field data by hand or by using computer-aided drafting programs.

This classification excludes draftsmen whose duties are limited to office work, who may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met, and surveyors employed by construction companies or other types of businesses who are to be reported separately in the applicable classifications for those businesses.)

**WSR 13-06-051**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed March 5, 2013, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-069.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on April 10, 2013, at 1:00 p.m.

Date of Intended Adoption: May 7, 2013.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail Thomas.Davis@LNI.wa.gov, fax (360) 902-4249, by 5 p.m. on April 16, 2013.

Assistance for Persons with Disabilities: Contact Tom Davis by April 3, 2013, TTY (360) 902-6687 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3): Increase the anesthesia conversion factor from \$3.22 to \$3.25.

WAC 296-23-220 and 296-23-230: Increase the maximum daily rate for physical and occupational therapy services from \$119.01 to \$119.96.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: (1) Increasing the conversion factor used to calculate maximum payment for anesthesia services; and

(2) Increasing the maximum daily payment for physical and occupational therapy services.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Vickie Kennedy, Assistant Director, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

March 5, 2013

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 12-11-107, filed 5/22/12, effective 7/1/12)

**WAC 296-20-135 Conversion factors.** (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of \$55.34. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~\$(3.22)~~ 3.25 per minute, which is equivalent to ~~\$(48.30)~~ 48.75 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 12-11-107, filed 5/22/12, effective 7/1/12)

**WAC 296-23-220 Physical therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist. In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided

to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~\$(+19.0+)~~ 119.96 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

**AMENDATORY SECTION** (Amending WSR 12-11-107, filed 5/22/12, effective 7/1/12)

**WAC 296-23-230 Occupational therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~\$(+19.0+)~~ 119.96 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

**WSR 13-06-052**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 (By the Code Reviser's Office)  
 [Filed March 5, 2013, 9:54 a.m.]

WAC 296-20-03015, proposed by the department of labor and industries in WSR 12-17-121 appearing in issue 12-17 of the State Register, which was distributed on September 5, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 13-06-060**  
**PROPOSED RULES**  
**DEPARTMENT OF COMMERCE**  
 [Filed March 5, 2013, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-03-039.

Title of Rule and Other Identifying Information: Practicable use of electricity and biofuels to fuel state vehicles, vessels, and construction equipment.

This rule defines practicability and clarifies how state agencies will be evaluated in determining whether they have met the goals set forth in RCW 43.19.648.

Hearing Location(s): Department of Commerce, Building 5, 1st Floor, Room 110, 1011 Plum Street, Olympia, WA 98501, on April 10, 2013, at 11:00 a.m.

Date of Intended Adoption: April 15, 2013.

Submit Written Comments to: Peter Moulton, P.O. Box 42525, Olympia, WA 98504-2525, e-mail peter.moulton@commerce.wa.gov, fax (360) 586-8440, by 8:00 a.m., April 12, 2013.

Assistance for Persons with Disabilities: Contact Carolee Sharp by April 9, 2013, TTY (360) 586-0772 or (360) 725-3118.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a new WAC, authorized by RCW 43.325.080 to define practicability and to clarify how state agencies will be evaluated in determining whether or not they have met the goals set out in RCW 43.19.648(1). Its anticipated effect is to reduce potential confusion among state agencies and their fleet managers.

Reasons Supporting Proposal: This rule making is required by RCW 43.325.080.

Statutory Authority for Adoption: RCW 43.325.080.

Statute Being Implemented: RCW 43.325.080 and 43.19.648.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington state department of commerce has held several meetings with affected state agencies to

develop this rule as required by statute. This rule will assist state agencies and their fleet managers. It builds upon data already collected and reported by state agencies to maximize efficiency and avoid fiscal impact of data collection and reporting.

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Moulton, Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, (360) 725-3116; Implementation and Enforcement: Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, (360) 725-4000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only addresses state agencies and will have no effect on small businesses. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Subsection (5)(b)(i) of RCW 34.05.328 does not require commerce to provide a cost-benefit analysis. Not applicable.

March 5, 2013

Peter Moulton

Emerging Technologies

Team Lead

## Chapter 194-28

### Practicable use of electricity and biofuels to fuel state vehicles, vessels, and construction equipment

#### NEW SECTION

**WAC 194-28-010 Authority and purpose.** This chapter is pursuant to the authority granted in RCW 43.325.080, which requires the department to adopt rules to define practicability and clarify how state agencies will be evaluated in determining whether they have met the goals set forth in RCW 43.19.648. The goals call for all state agencies, to the extent practicable, to:

(1) Achieve forty percent fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel by June 1, 2013, and

(2) Satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel, effective June 1, 2015.

#### NEW SECTION

**WAC 194-28-020 Definitions and abbreviations.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" or "agencies" - means any state agency or all state agencies, including institutions of higher education.

(2) "Biofuels" - as defined by RCW 43.325.010(4) includes but is not limited to biodiesel, ethanol, ethanol blend fuels, and renewable liquid natural gas or liquid compressed natural gas made from biogas.

(3) "Department" - means the Department of Commerce.

(4) "Ecology" - means the Department of Ecology.

(5) "Electric vehicle supply equipment (EVSE)" - means equipment that delivers electrical energy from an electricity source to charge plug-in electric vehicle batteries.

(6) "Enterprise Services" - means the Department of Enterprise Services.

(7) "Greenhouse gas," "greenhouse gases," "GHG" and "GHGs" - include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by Ecology by rule in Table A-1 under WAC 173-441-040.

(8) "Hybrid electric vehicle (HEV)" - means a vehicle that combines an internal combustion engine or other propulsion source with batteries, regenerative braking, and an electric motor. HEVs rely on petroleum-based or alternative fuel for power and are not plugged in to charge batteries.

(9) "Lifecycle cost" - means the total cost of ownership over the life of an asset. This includes purchase or lease cost, operations and maintenance, depreciation, and resale or surplus value.

(10) "Light-duty vehicle" - means a sedan, station wagon, or other passenger car.

(11) "Light-duty truck" - means a pickup truck, van, or sport utility vehicle with a gross vehicle weight of up to 8,500 pounds.

(12) "Medium-duty passenger vehicle" - means a passenger vehicle or sport utility vehicle with a gross vehicle weight of between 8,500 and 10,000 pounds.

(13) "Plug-in electric vehicle (PEV)" - means a vehicle that derives all or part of its power from electricity supplied by an external source.

(14) "Plug-in hybrid electric vehicle (PHEV)" - means a vehicle that uses batteries to power an electric motor, plugs into an external source to charge batteries, and also uses petroleum-based or alternative fuel to power an internal combustion engine to charge batteries. PHEVs are also known as extended range electric vehicles.

(15) "Practicable or practicability" - means the extent to which electricity and biofuel can be used as a fuel source for state vehicles, vessels, and construction equipment as determined by such factors as cost differentials between fuels, availability, refueling infrastructure, functional differences, technical feasibility, implementation costs, and other factors.

(16) "Reasonably available" - means a determination dependent upon multiple dynamic factors affecting reliable volumes and delivery systems, including ability to purchase through the state procurement system, location of refueling infrastructure, and other issues. RCW 43.19.648(1) provides the department the ability to allow state agencies to substitute Compressed Natural Gas (CNG), Liquid Natural Gas (LNG), and propane from fossil fuel sources if the department determines that electricity and biofuel are not reasonably available.

(17) "Renewable natural gas" - means biogas derived from landfills, wastewater treatment facilities, anaerobic digesters, and other sources of organic decomposition that has been purified to meet standards for natural gas derived from fossil fuel sources.

(18) "Vehicles, vessels, and construction equipment" - means publicly owned vessels, vehicles, and construction

equipment operated by a state agency. It does not mean aircraft and stationary electrical generating equipment.

#### NEW SECTION

**WAC 194-28-030 Applicability.** All state agencies are required to transition all vehicles, vessels, and construction equipment to electricity and biofuels to the extent practicable. The provisions of this chapter apply statewide.

#### NEW SECTION

**WAC 194-28-040 Assessment data.** For purposes of assessing and reporting use of electricity and biofuels, the Department will use data collected and compiled annually by Ecology on agency GHG emissions as directed by RCW 70.235.050. In the event that mandatory reporting of agency GHG emissions is repealed, the department will work with stakeholders to identify an efficient and effective alternate means of obtaining and reporting information needed to monitor compliance.

Given the findings of the underlying legislation and associated policies guiding agency use of alternative fuels and vehicles, the department intends to continue to monitor agency compliance beyond June 1, 2015.

#### NEW SECTION

**WAC 194-28-050 Compliance threshold.** In order to maximize administrative efficiency while still addressing the preponderance of agency fuel consumption, compliance will be assessed for each agency that reported use of more than 50,000 gallons of gasoline and diesel, combined, during the 2011 calendar year for vehicles, vessels, and construction equipment. Progress towards compliance by agencies below this threshold will be assessed in aggregate. Agencies meeting the threshold for individual compliance assessment are:

- Washington State Department of Agriculture
- Washington State Department of Corrections
- Washington State Department of Ecology
- Washington State Department of Enterprise Services
- Washington State Department of Fish and Wildlife
- Washington State Department of Labor and Industries
- Washington State Department of Natural Resources
- Washington State Department of Social and Health Services
- Washington State Department of Transportation
- Washington State Liquor Control Board
- Washington State Parks and Recreation Commission
- Washington State Patrol
- Eastern Washington University
- University of Washington
- Washington State University
- Western Washington University

NEW SECTION

**WAC 194-28-060 Technical coordination.** The department, in cooperation with the Washington State University Energy Program and external stakeholders with appropriate knowledge and expertise, will convene quarterly meetings with the agencies listed in WAC 194-28-050 to discuss trends in alternative fuel and vehicle development, including current and near-term market availability, procurement costs and pricing differentials, performance metrics, innovative procurement opportunities, and fleet management tools. The meetings will take place in person, by phone, via the Internet, or any combination thereof through the second quarter of 2015, and thereafter as may be warranted.

NEW SECTION

**WAC 194-28-070 Compliance evaluation.** RCW 43.325.080 requires the department to specify how agency efforts to meet the goals set forth in RCW 43.19.648(1) will be evaluated. In so doing, the department will consider the following criteria in determining whether state agencies have, to the extent practicable, satisfied one hundred percent of fuel usage for operating vessels, vehicles, and construction equipment from electricity or biofuel, effective June 1, 2015:

## (1) Vehicle Electrification

(a) It is considered practicable to procure a PHEV and PEV light-duty vehicle, light-duty truck, or medium-duty passenger vehicle when the following criteria are met:

- (i) The vehicle is due for replacement,
- (ii) The anticipated driving range or use would not require battery charging in the field on a routine basis, and
- (iii) The lifecycle cost is within five percent of an equivalent HEV based on anticipated length of service.

(b) Agencies are encouraged to pursue electrification in additional vehicle classes as opportunities emerge.

(c) Per RCW 43.19.648(5), agencies are to install EVSE capable of charging PEVs and PHEVs in each of the state's fleet parking and maintenance facilities, to the extent practicable, by December 31, 2015. The department is not charged with monitoring or reporting on compliance with this law, but agencies need to show progress in this area for electricity to be a feasible fuel source at these locations.

(d) Under the federal Energy Independence and Security Act of 2007, the U.S. Department of Energy (USDOE) is responsible for rulemaking to determine the extent to which alternative fuel credits recognize electricity used by HEVs and PHEVs in state vehicle fleets subject to the federal Energy Policy Act of 1992. The department will utilize the USDOE rule when crediting compliance for these vehicles.

## (2) Biofuels

(a) Biodiesel: Unless otherwise limited by law, it is considered practicable for agencies to:

(i) Use a minimum of twenty percent biodiesel-blend fuel (B20) on an annualized basis when purchasing fuel through the state procurement system.

(ii) Make good faith efforts to identify sources and procure a minimum of B20 when purchasing fuel on a retail basis.

(b) Ethanol: It is considered practicable for agencies with "flex-fuel" vehicles capable of using either high-blend

ethanol fuel (E85) or regular gasoline to make good faith efforts to identify sources and procure E85 when purchasing fuel on a retail basis if the price of E85 is at least twenty percent less than regular gasoline.

(c) Renewable Natural Gas: It is considered practicable for agencies considering acquisition of natural gas-fueled vehicles to actively assess opportunities to procure renewable natural gas as the primary fuel.

## (3) Alternate Fuels

Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department determines that electricity and biofuel are not reasonably available. If an agency believes electricity and biofuels are not reasonably available to fuel a specific vehicle, vessel, or construction equipment, the agency must submit a request for such a determination to the department by July 1 of the year prior to the agency's anticipated procurement on a form provided by the department. Such a request may be made as part of the agency's annual reporting under WAC 194-28-080.

NEW SECTION

**WAC 194-28-080 Demonstration of progress.** By July 1 of each year, each agency listed in WAC 194-28-050 must submit to the department an annual report on a form provided by the department documenting how it is complying with the criteria in WAC 194-28-070, including reasons for noncompliance and plans for future compliance.

**WSR 13-06-072****PROPOSED RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Filed March 6, 2013, 10:28 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-064 on December 17, 2012.

Title of Rule and Other Identifying Information: WAC 220-47-311 Purse seine—Open periods, 220-47-411 Gillnet—Open periods, and 220-47-428 Beach seine—Open periods.

Hearing Location(s): Natural Resources Building, 1111 Washington Street, Room 630, Olympia, WA 98504, on Tuesday, April 9, 2013, 8:30 a.m. to 9:30 a.m.

Date of Intended Adoption: On or after April 12, 2013.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail [Lori.preuss@dfw.wa.gov](mailto:Lori.preuss@dfw.wa.gov), fax (360) 902-2155, by March 28, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by March 28, 2013, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take

harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.12.045, 77.12.047, and 77.04.020.

Statute Being Implemented: RCW 77.12.045, 77.12.-047, and 77.04.020.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

**1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule:**

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:**

These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:**

The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

**4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?**

The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

**5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:**

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

None, the proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:**

Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions the Washington department of fish and wildlife (WDFW) has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:**

As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

**8. A List of Industries That Will Be Required to Comply with the Rule:**

All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:**

As explained above, these rules impose similar requirements to those for previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capital Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360)902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

March 6, 2013

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

**WAC 220-47-311 Purse seine—Open periods.** It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2( <del>3</del> )
	7AM - 5PM	- 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9( <del>10</del> )

AREA	TIME	DATE
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).		
7B, 7C:	6AM - 9PM	- ((8/15)) 8/14
7B, 7C:	6AM - 8PM	- ((8/22, 8/29, 9/5)) 8/21, 8/28, 9/4
7B:	7AM - 8PM	- ((9/10, 9/12, 9/14)) 9/9, 9/11, 9/13
	<del>((7AM-7PM))</del>	- 9/17, 9/19, 9/21))
	7AM	- 6PM ((10/27)) 10/26
	<del>((9/23))</del>	
	9/15	
	7AM	- 4PM ((11/2)) 11/1
	<del>((10/29))</del>	
	10/28	
	7AM	- 4PM ((11/9)) 11/8
	<del>((11/5))</del>	
	11/4	
	7AM	- 4PM ((11/16)) 11/15
	<del>((11/12))</del>	
	11/11	
	7AM	- 4PM ((11/23)) 11/22
	<del>((11/19))</del>	
	11/18	
	7AM	- 4PM ((11/30)) 11/29
	<del>((11/26))</del>	
	11/25	

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

AREA	TIME	DATE
8:	6AM - 7PM	= 8/26, 8/28, 9/3, 9/5
8A:	6AM - 7PM	= 8/22, 8/27, 8/29, 9/3
	7AM - 7PM	- Limited participation - Two boats ((9/17, 9/24)) 9/23, 9/30, 10/7

AREA	TIME	DATE
8D:	7AM - 7PM	- ((9/17, 9/24, 10/1, 10/8)) 9/23, 9/30, 10/7
	7AM - 6PM	- ((10/16, 10/22, 10/24, 10/29)) 10/14, 10/21, 10/28, 10/30
	7AM - 5PM	- ((11/5, 11/7)) 11/4, 11/11, 11/13, ((11/20)) 11/18
10:	6AM - 7PM	= 8/26, 8/28, 9/4
10, 11:	7AM - 6PM	- ((10/15, 10/23, 10/25, 10/29)) 10/22, 10/28, 10/30
	7AM - 5PM	- ((11/6, 11/8, 11/12, 11/20)) 11/5, 11/11, 11/13, 11/19, 11/26
12, 12B:	7AM - 6PM	- ((10/15, 10/23, 10/25, 10/29)) 10/22, 10/28, 10/30
	7AM - 5PM	- ((11/6, 11/8, 11/12, 11/20)) 11/5, 11/11, 11/13, 11/19
12C:	7AM - 5PM	- ((11/6, 11/8, 11/12, 11/20)) 11/5, 11/11, 11/13, 11/19, 11/26

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.

Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 2 in Area 7B.

Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

All other saltwater and freshwater areas - Closed.

**AMENDATORY SECTION** (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

**WAC 220-47-411 Gillnet—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	- 7PM	5"
		(9/21, 9/22)) 9/23, 9/24, 9/25, 9/26, 9/27, ((9/28)) 9/30, 10/1, 10/2, 10/3, 10/4, ((10/5)) 10/7, 10/8, 10/9, 10/10, 10/11, ((10/12)) 10/14, 10/15, 10/16, 10/17, 10/18, ((10/19)) 10/21, 10/22, 10/23, 10/24, 10/25	
Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.			
7, 7A:	7AM	- Midnight; use of recovery box required	6 1/4"
		10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19((10/20))	

AREA	TIME		DATE(S)	MINIMUM MESH
	7AM	-	Midnight <u>10/20</u> , 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9( <del>11/10</del> )	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October 21, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM	-	8AM NIGHTLY ( <del>8/42</del> ) <u>8/11, 8/13</u> , 8/14, ( <del>8/45</del> ) <u>8/18</u> , 8/19, 8/20, 8/21, ( <del>8/22, 8/26,</del> <del>8/28, 8/29, 8/30</del> ) <u>8/25, 8/27, 8/28</u>	7"
7B, <u>7C</u> :	7AM ( <del>9/2</del> ) <u>9/1</u>	-	7AM ( <del>9/7</del> ) <u>9/6</u>	5"
	7AM ( <del>9/9</del> ) <u>9/8</u>	-	7AM ( <del>9/13</del> ) <u>9/12</u>	
	7AM ( <del>9/16</del> ) <u>9/15</u>	-	7AM ( <del>9/20</del> ) <u>9/19</u>	5"
	7AM ( <del>9/23</del> ) <u>9/22</u>	-	Midnight ( <del>10/27</del> ) <u>10/26</u>	5"
	7AM ( <del>10/29</del> ) <u>10/28</u>	-	4PM ( <del>11/2</del> ) <u>11/1</u>	6 1/4"
	6AM ( <del>11/5</del> ) <u>11/4</u>	-	4PM ( <del>11/9</del> ) <u>11/8</u>	6 1/4"
	6AM ( <del>11/12</del> ) <u>11/11</u>	-	4PM ( <del>11/16</del> ) <u>11/15</u>	6 1/4"
	6 AM ( <del>11/19</del> ) <u>11/18</u>	-	4PM ( <del>11/23</del> ) <u>11/22</u>	6 1/4"
	7 AM ( <del>11/26</del> ) <u>11/25</u>	-	4PM ( <del>11/30</del> ) <u>11/29</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	<u>5AM</u>	=	<u>11PM</u>	<u>8/27, 8/29</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>5:30AM</u>	=	<u>11PM</u>	<u>9/2, 9/4</u>	<u>5" minimum and 5 1/2" maximum</u>

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	<u>5AM</u>	=	<u>11PM</u>	<u>8/21, 8/26, 8/28</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>5:30AM</u>	=	<u>11PM</u>	<u>9/4</u>	<u>5" minimum and 5 1/2" maximum</u>
	6PM	-	8AM	Limited participation; 2 boats only ( <del>9/19</del> ) <u>9/24</u>	5"
	6PM	-	8AM	NIGHTLY ( <del>9/25, 9/26</del> ) <u>10/1, 10/2, 10/8</u>	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	-	8AM	NIGHTLY ( <del>9/16, 9/20, 9/23, 9/27, 9/30,</del> <del>10/4</del> ) <u>9/22, 9/26, 9/29, 10/3, 10/6, 10/10</u>	5"
	6PM ( <del>9/17</del> ) <u>9/23</u>	-	8AM ( <del>9/20</del> ) <u>9/26</u>		5"
	6PM ( <del>9/24</del> ) <u>9/30</u>	-	8AM ( <del>9/27</del> ) <u>10/3</u>		5"

AREA	TIME		DATE(S)	MINIMUM MESH
	6PM <del>((40/4))</del> <u>10/7</u>	-	8AM <del>((40/4))</del> <u>10/10</u>	5"
	5PM <del>((40/8))</del> <u>10/14</u>	-	8AM <del>((40/4))</del> <u>10/17</u>	5"
	5PM <del>((40/15))</del> <u>10/21</u>	-	9AM <del>((40/18))</del> <u>10/24</u>	5"
	5PM <del>((40/22))</del> <u>10/28</u>	-	9AM <del>((40/25))</del> <u>10/31</u>	5"
	5PM <del>((40/29))</del> <u>11/4</u>	-	9AM <del>((41/4))</del> <u>11/7</u>	5"
	6AM	-	6PM <del>((11/7, 11/8, 11/14, 11/15, 11/21, 11/22))</del> <u>11/13, 11/14, 11/20, 11/21, 11/27, 11/28</u>	6 1/4"
	6AM	-	4PM <del>((11/9, 11/16, 11/23))</del> <u>11/15, 11/22, 11/29</u>	6 1/4"
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM <del>((8/19))</del> <u>8/25</u>	-	7PM <del>((40/27))</del> <u>11/2</u>	5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	<u>5AM</u>	=	<u>11PM</u>	<u>Limited Participation - 4 boats 8/27, 8/29</u>	<u>4 1/2" minimum and 5 1/2" maximum</u>
	<u>5:30AM</u>	=	<u>11PM</u>	<u>Limited Participation - 4 boats 9/3</u>	<u>4 1/2" minimum and 5 1/2" maximum</u>

Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM	-	9AM	NIGHTLY <del>((40/16, 10/17, 10/21, 10/30, 40/31))</del> <u>10/20, 10/23, 11/3, 11/6</u>	6 1/4"
	<u>5PM</u>	=	<u>8AM</u>	<u>10/29</u>	<u>6 1/4"</u>
	4PM	-	9AM	NIGHTLY <del>((11/4, 11/13, 11/18))</del> <u>11/12, 11/17, 11/24</u>	6 1/4"
	4PM	-	Midnight	NIGHTLY <del>((40/24, 11/7, 11/14, 11/21))</del> <u>10/31, 11/14, 11/20, 11/27</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM	-	8PM	<del>((40/16, 10/18, 10/22, 10/24, 10/30, 11/1))</del> <u>10/21, 10/23, 10/29, 10/31, 11/4, 11/6</u>	6 1/4"
	6AM	-	6PM	<del>((11/5, 11/7, 11/13, 11/15, 11/19))</del> <u>11/12, 11/14, 11/18, 11/20</u>	6 1/4"
12C:	6AM	-	6PM	<del>((11/5, 11/7, 11/13, 11/15, 11/19, 11/21))</del> <u>11/12, 11/14, 11/18, 11/20, 11/26, 11/28</u>	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

**WAC 220-47-428 Beach seine—Open periods.** It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/21, 8/22, 8/23, ( <del>8/24</del> ) 8/26, 8/27, 8/28, 8/29, 8/30, ( <del>8/31</del> ) 9/2, 9/3, 9/4, 9/5, 9/6, ( <del>9/7</del> ) 9/9, 9/10, 9/11, 9/12, 9/13, ( <del>9/14</del> ) 9/16, 9/17, 9/18, 9/19, 9/20, ( <del>9/21</del> ) 9/23, 9/24, 9/25, 9/26, 9/27( <del>9/28</del> )
12H:	7AM - 7PM	November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

**WSR 13-06-073**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed March 6, 2013, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-064 on December 17, 2012.

Title of Rule and Other Identifying Information: WAC 220-36-023 Salmon—Grays Harbor fall fishery, 220-40-021 Salmon—Willapa Bay summer fishery, 220-40-027 Salmon—Willapa Bay fall fishery, and 220-56-105 River mouth definitions.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on Tuesday, April 9, 2013, at 10 a.m. - 11:30 a.m.

Date of Intended Adoption: April 16, 2013.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by March 28, 2013.

Assistance for Persons with Disabilities: Contact Tami Lining by March 28, 2013, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay and Grays Harbor, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect species of fish listed as endangered while supporting commercial salmon fishing in Willapa Bay and Grays Harbor.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.-045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

**1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule:** These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay and Grays Harbor.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:** None, these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor and Willapa Bay that are closed to commercial harvest methods, and explain legal gear requirements.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** None anticipated, these rules are similar to previous years' rules for Willapa Bay and Grays Harbor, and no extra costs of compliance are required.

**4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?** No.

**5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:**

1. Cost per employee;
  2. Cost per hour of labor; or
  3. Cost per one hundred dollars of sales.
- There are no anticipated costs of compliance.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So:** The department issues an annual pamphlet and mailer to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** The department cosponsors the annual North of Falcon process, which is a series of public meetings held over a period of several months from February through April each year. These



(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August 15, ~~((2012))~~ 2013, for openings in Area 2C. Notice of intent must be given prior to 12:00 p.m. on September ~~((26, 2012))~~ 25, 2013, for openings in Areas 2A and 2D.

(6) Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.

(7) Retention of any species other than coho salmon, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October 1 through October ~~((20, 2012))~~ 19, 2013. Retention of any species other than coho, chum, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October ~~((24, 2012))~~ 13, 2013.

(8) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(9) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This mea-

surement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(10) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing the tags.

(11) It is unlawful to fish for salmon with gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

**WAC 220-40-021 Willapa Bay salmon—Summer fishery.** From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

**Fishing periods:**

(1) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook salmon:

Time:	Areas:
6:00 p.m. August <del>((12))</del> <u>11</u> through 11:59 p.m. August <del>((15, 2012))</del> <u>14, 2013</u> .	2M, 2N, 2R, 2T, and 2U

**Gear:**

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

Only one net may be fished at a time; other nets must be properly stored.

It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay.

(b) Mesh size must not exceed nine inches.

**Other:**

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa

Bay Areas 2M, 2N, 2R, 2T, and 2U. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(c) All wild (unmarked) Chinook, chum, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or an operating recovery box when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2M, 2N, 2R, 2T, and 2U.

(d) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection.

(e) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited.

(6) Report ALL encounters of wild (unmarked) Chinook, green sturgeon, and steelhead (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon

to be retained must have a fork-length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing the tags.

(9) It is unlawful to fish with gillnet gear in Areas 2K, 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August (~~8, 2012~~) 7, 2013.

**AMENDATORY SECTION** (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

**WAC 220-40-027 Salmon—Willapa Bay fall fishery.** From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

**Fishing periods:**

(1) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook:

Time:	Area:
12:00 a.m. August ( <del>(16)</del> ) <u>15</u> through 6:00 a.m. August ( <del>(16, 2012)</del> ) <u>15, 2013</u> ;	<b>Area 2M, Area 2N, Area 2R, Area 2T, and Area 2U</b>
6:00 p.m. August ( <del>(21)</del> ) <u>20</u> through 6:00 a.m. August ( <del>(22, 2012)</del> ) <u>21, 2013</u> ;	<b>Area 2U</b>
6:00 p.m. August ( <del>(26)</del> ) <u>25</u> through 6:00 a.m. August ( <del>(27, 2012)</del> ) <u>26, 2013</u> ;	<b>Area 2N, Area 2R, and Area 2U</b>
AND	
6:00 p.m. August ( <del>(28)</del> ) <u>27</u> through 6:00 a.m. August ( <del>(29, 2012)</del> ) <u>28, 2013</u> ;	
6:00 p.m. August ( <del>(30)</del> ) <u>29</u> through 6:00 a.m. August ( <del>(31, 2012)</del> ) <u>30, 2013</u> ;	<b>Area 2N and Area 2U</b>
6:00 p.m. September ( <del>(4)</del> ) <u>3</u> through 6:00 a.m. Septem- ber ( <del>(5, 2012)</del> ) <u>4, 2013</u> ;	<b>Area 2N, Area 2R, and Area 2U</b>
AND	

## Time:

6:00 p.m. September ((6)) 5 through 6:00 a.m. September ((7, 2012)) 6, 2013;

6:00 p.m. September ((9)) 10 through 6:00 a.m. September ((10, 2012)) 9, 2013;  
6:00 p.m. September ((12)) 11 through 6:00 a.m. September ((13, 2012)) 12, 2013;

6:00 p.m. September ((19)) 18 through 6:00 p.m. September ((20, 2012)) 19, 2013;

AND

6:00 p.m. September ((26)) 25 through 6:00 p.m. September ((27, 2012)) 26, 2013;

6:00 p.m. September ((15)) 14 through 6:00 p.m. October ((13, 2012)) 12, 2013;

AND

12:00 p.m. November ((6)) 5 through 12:00 p.m. November 30, ((2012)) 2013.

**Gear:**

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

Only one net may be fished at a time; other nets must be properly stored.

It is unlawful to use a gillnet to fish for salmon and/or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.

## Area:

**Area 2M, Area 2N, Area 2R, Area 2T**, east of a line projected from the eastern most upland at Toke Point (approximately 46° 42' 26"N, 123° 57' 58"W) to Goose Point (approximately 46° 38' 12" N, 123° 57' 31" W) then to the eastern boundary at Range Marker "B" (located at 46° 42' 34" N, 123° 51' 18" W), and **Area 2U**

**Area 2K**

**Area 2M, Area 2N, Area 2R, Area 2T, and Area 2U**

(b) From August 16 through September ((13, 2012)) 12, 2013: Mesh size must not exceed nine-inch maximum mesh.

(c) From September 15 through October 31, ((2012)) 2013: Mesh size must not exceed six and one-half inch maximum mesh.

(d) From November 6 through November 30, ((2012)) 2013: Mesh size must be nine-inch minimum mesh, except that from 6:00 p.m. November ((11)) 10 through 6:00 p.m. November ((19, 2012)) 18, 2013 (coho directed), there are two alternatives:

- (i) Use six and one-half inch maximum mesh; or
- (ii) Use nine-inch minimum mesh.

Only one net of either six and one-half inch or nine-inch configuration, not exceeding fifteen hundred feet, may be used when in the act of fishing.

**Other:**

(3) Recovery boxes and soak time:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U from August 16 through October 31, ((2012)) 2013. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) From August 16 through October 31, ((2012)) 2013, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(c) From August 16 through October 31, ((2012)) 2013, all chum, nonlegal sturgeon, all steelhead, and wild (unmarked) Chinook must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U.

From November ((6)) 5 through November 30, ((2012)) 2013, all chum, all nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(d) Any steelhead or salmon required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection.

(e) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, white sturgeon with fork length measure not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing tags.

(9) It is unlawful to fish with gillnet gear in Areas 2K, 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August (~~15, 2012~~) 14, 2013.

**AMENDATORY SECTION** (Amending Order 12-190, filed 8/23/12, effective 9/23/12)

**WAC 220-56-105 River mouth definitions.** When pertaining to angling, unless otherwise defined, any reference to the mouths of rivers or streams includes those waters of any river or stream, including sloughs and tributaries, upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost upland" means those lands not covered by water during an ordinary high tide. The following river mouths are hereby otherwise defined:

Abernathy Creek - Highway 4 Bridge.  
 Bear River - Highway 101 Bridge.  
 Bone River - Highway 101 Bridge.  
 Chambers Creek - Burlington Northern Railroad Bridge.  
 Chehalis River - Highway 101 Bridge in Aberdeen.  
 Chelan River - Railroad Bridge.  
 Cispus River - Posted markers at the Lewis County P.U.D. kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus rivers.  
 Cowlitz River - A line projected across the river between two fishing boundary markers set on each bank of the river approximately one-half mile downstream from the lowermost railroad bridge crossing the Cowlitz River.  
 Dakota Creek - A line from the outermost headland of the south bank to a house at 1285 Runge Avenue, Blaine, Washington, approximately one-quarter mile downstream from the Blaine Road Bridge.  
 Deschutes River - A line projected across the river 400 feet below the lower Tumwater Falls fish ladder.  
 Drano Lake - Highway 14 Bridge.  
 Duwamish River - First Avenue South Bridge.  
 Elk River - Highway 105 Bridge.  
 Entiat River - Highway 97 Bridge.  
 Hawk Creek (Lincoln County) - Falls at the Hawk Creek campground.  
 Hoquiam River - Highway 101 Bridge.  
 Humptulips River - Mouth of Jessie Slough.  
 Johns River - Highway 105 Bridge.  
 Kennedy Creek - An arc 500 yards east of the midpoint of the northbound Highway 101 Bridge.  
 Kettle River - Barstow Bridge.  
 Lake Washington Ship Canal - A line 400 feet west of the fish ladder at the Chittenden Locks.  
 Lewis River - A straight line running from a fishing boundary marker or from the outermost upland at the north shore of the Lewis River mouth, southerly across the Lewis River to a fishing boundary marker near the south shore.  
 McLane Creek - A line 100 feet upstream of and parallel to the southernmost Highway 101 Bridge.  
 Methow River - Highway 97 Bridge.  
 Naselle River - Highway 101 Bridge.  
 North Nemah River - Highway 101 Bridge.  
 Niawiakum River - Highway 101 Bridge.  
 Nisqually River - At the upstream end of Alder Lake, the mouth of the Nisqually River is the Highway 7 Bridge at Elbe.  
 North River - Highway 105 Bridge.  
 Palix River - Highway 101 Bridge.  
 Puyallup River - 11th Street Bridge.

Samish River - The Samish Island Bridge (Bayview-Edison Road).

Sammamish River - 68th Avenue NE Bridge.

Skagit River - A line projected from the terminus of the jetty with McGlenn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.

Skamokawa Creek - Highway 4 Bridge.

Skookum Creek - A line 400 yards below the old railroad bridge.

Snohomish River - Burlington Northern Railway Bridges crossing main river and sloughs.

South Nemah River - Lynn Point 117 degrees true to the opposite shore.

Spokane River - State Route 25 Bridge.

Tahuya River - North Shore Rd. Bridge.

Wallace River - The furthest downstream railroad bridge.

Washougal River - A straight line from the Crown Zellerbach pumphouse southeasterly across the Washougal River to the east end of the Highway 14 Bridge near the upper end of Lady Island.

Whatcom Creek - A line projected approximately 14 degrees true from the flashing light at the southwestern end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.

Little White Salmon River - At boundary markers on river bank downstream from the Little White Salmon National Fish Hatchery.

Willapa River - City of South Bend boat launch.

Wind River - Boundary line markers at mouth.

Yakima River - Highway 240 Bridge.