

**WSR 12-16-023**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)

[Filed July 25, 2012, 7:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-093.

Title of Rule and Other Identifying Information: Chapter 388-513 WAC, Client not in own home, institutional medical and chapter 388-515 WAC, Alternative living, institutional medical.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on September 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 26, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 25, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 4, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

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

- Combine categorically needy (CN) and medically needy (MN) home and community-based waiver eligibility based on approval by Centers for Medicare and Medicaid Services.
- Update excess home equity standard and add formula for increase based on federal standards for January 2011, and ongoing.
- Update federal utility standard used in spousal deeming.
- Clarifying reasonable limits for qualifying medical deductions.
- Update links and references based on program changes made by economic services administration (ESA) and health care authority (HCA).
- Update links and references based on HB 1738 and HCA medicaid WACs recodified under Title 182 WAC.
- Correction of language allowing the federal poverty level (FPL) as a personal needs allowance (PNA) for a married individual receiving a home and community-based waiver, living at home but apart from the community spouse.
- Add language to the hardship waiver WAC to include transfers between registered domestic partners or legally married same sex couples up to the resource amount a married [couple] is allowed for transfer of resources.
- Updating references and adding clarifying language.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, and 74.09.530.

Rule is necessary because of federal law, C.F.R. Title 42: 435.725; 435.217; 435.733. Section 6014 of the Deficit Reduction Act of 2005.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. [Rules] are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

July 19, 2012

Katherine I. Vasquez

Rules Coordinator

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

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

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

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

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

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

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

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

(2) Adult residential care facility (ARC) (formerly known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal

care and supervision. Licensed as an assisted living under chapter 18.20 RCW.

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

(4) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPES eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapter 18.20 RCW.

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

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

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

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

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

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

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

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

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

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

**"Community spouse excess shelter"** means the excess shelter standard is used to calculate whether a community

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

**"Community spouse income and family allocation"** means:

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

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

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

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

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

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

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

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

**"Equity"** means the equity of real or personal property is the fair market value (see definition below) less any

encumbrances (mortgages, liens, or judgments) on the property.

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

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

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

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

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

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

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

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

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

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

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

**"Likely to reside"** means a determination by the department that a client is reasonably expected to remain in a medical ~~((facility))~~ institution for thirty consecutive days. Once

made, the determination stands, even if the client does not actually remain in the facility for that length of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) An intentional act that changes ownership or title; or
- (2) A failure to act that results in a change of ownership or title.

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

- (1) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or
- (2) The date of transfer for real property is the day the signed deed is delivered to the grantee.

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

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

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

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

- (1) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and
- (2) The payment or assumption of a legal debt the seller owes in exchange for the asset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) ~~((An adult residential treatment facility (ARTF)))~~ Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPEs eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapter 18.20 RCW and chapter 388-78A WAC;

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

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

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

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

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

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

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

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

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

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

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

478-0045. Follow MN rules described in chapter 388-519 WAC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b) The client satisfies any spenddown liability as described in chapter 388-519 WAC))~~ client described in subsection (7) residing in an adult family home (AFH) receives a grant based on a payment standard described in WAC 388-

478-0033 due to an obligation to pay shelter costs to the adult family home. The client keeps a CPI in the amount of thirty-eight dollars and eighty-four cents described in WAC 388-478-0045 and pays the remainder of the grant to the adult family home as room and board.

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

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

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

AMENDATORY SECTION (Amending WSR 10-01-158, filed 12/22/09, effective 1/22/10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Transfers between medical facilities; or

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

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

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

**WAC 388-513-1325 Determining available income for an SSI-related single client for long-term care (LTC)**

**services (institutional, waiver or hospice).** This section describes income the department considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The spouse; or

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

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

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

AMENDATORY SECTION (Amending WSR 09-09-101, filed 4/20/09, effective 5/21/09)

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

(1) Crime victim's compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

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

(i) Based on need; and

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

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

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

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

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

~~(i) Unusual medical expenses;~~

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

~~(iii) Housebound allowance; and~~

~~(b) The client:~~

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

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

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

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

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

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

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

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

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

(a) Two thousand dollars for:

(i) A single client; or

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

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

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

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

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

~~((4))~~ (5) If the department has already established eligibility and authorized services for one spouse, and the com-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) As long as the incurred medical expenses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) The institutionalized spouse; or
- (ii) Both spouses.

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

- (i) Either spouse; or
- (ii) Both spouses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WAC 388-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services.** This section describes

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Spouse; or

(ii) Child, who:

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

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

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

in the home. A physician's statement of needed care is required; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Spouse; or

(ii) Child, who:

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

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

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

(iii) Brother or sister, who has:

(A) Equity in the home; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound

based on the life expectancy of that individual or the term or the trust, whichever is less; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Both spouses are receiving LTC services; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Spouse; or

(ii) Child, who:

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

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

(iii) A son or daughter, who:

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

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

(iv) A brother or sister, who has:

(A) Equity in the home, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Begin on the latter of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Both spouses are receiving LTC services; and

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

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

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

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

- Defines undue hardship;

- Specifies the approval criteria for an undue hardship request;

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

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

(1) When does undue hardship exist?

(a) Undue hardship may exist:

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

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

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

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

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

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

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

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

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

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

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

(2) Undue hardship does not exist:

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

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

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

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

(3) How is an undue hardship waiver requested?

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

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative;

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

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

(b) Request must:

(i) Be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

(7) What statute or rules govern administrative hearings?

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-07-037, filed 3/10/09, effective 4/10/09)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Wages for a client who:

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

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

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

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

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

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

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

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

(i) Consists of a combined total of both:

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

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

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

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

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

(i) Resides with the community spouse:

(A) ~~((In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases~~

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

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

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

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

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

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

(ii) Limited to a six-month period;

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

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

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

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

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

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Is approved for twelve months; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((7))~~ (8) If the ((combined total of a client's nonexcluded income, which when added to nonexcluded resources is above the facility monthly private rate)) income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:

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

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

#### NEW SECTION

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

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

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

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

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

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

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

(2) The HCB service programs are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Assisted living (AL) facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) You must meet the following resource requirements:

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

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

(4) You must meet the following income requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Consists of a combined total of both:

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

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

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

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((1))~~ The four DDD HCBS waivers are:

~~(a) Basic;~~

~~(b) Basic plus;~~

~~(c) Core; and~~

~~(d) Community protection.)~~

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

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

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

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

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

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

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

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

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

(A) A group home;

(B) Group training home;

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

(D) Adult family home (AFH); or

(E) Adult residential care (ARC) facility.

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

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

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

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

**WAC 388-515-1512 What are the financial requirements for the DDD waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (~~((CN-P))~~) (CN)?** (1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (~~((CN-P))~~) (CN) under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;

(b) Healthcare for workers with disabilities (HWD) described in WAC (~~(388-475-1000)~~) 182-511-1000 through (~~(388-475-1250)~~) 182-511-1250;

(c) SSI-related (~~((CN-P))~~) (CN) medicaid described in WAC (~~(388-475-0100)~~) 182-512-0100 (2)(a) and (b) or meets the requirements in WAC (~~(388-475-0880)~~) 182-512-0880 and is (~~((CN-P))~~) (CN) eligible after the income disregards have been applied;

(d) (~~((CN-P))~~) (CN) medicaid for a child as described in WAC (~~(388-505-0210)~~) 182-505-0210 (1), (2), (7) or (8); or

(e) (~~(General assistance expedited medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6))~~) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.

(2) If you are eligible for a (~~((CN-P))~~) (CN) medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a (~~((CN-P))~~) (CN) medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a (~~((CN-P))~~) (CN) medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC (~~(388-515-1505)~~) 388-515-1507. Room and board and long-term care standards are located at (~~(http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml)~~) http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents.

(5) If you are eligible for a premium based medicaid program such as healthcare for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

**WAC 388-515-1513 How does the department determine if I am financially eligible for DDD waiver service medical coverage if I am not eligible for medicaid under a categorically needy program (~~((CN-P))~~) (CN) listed in WAC 388-515-1512(1)?** If you are not eligible for medicaid under a categorically needy program (~~((CN-P))~~) (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed (~~(under WAC 388-515-1350, we may reduce the amount we are required to count if you have unpaid medical expenses.~~

(a) ~~We will reduce your resources in an amount equal to the unpaid medical expenses you verify. The anticipated cost of your waiver services cannot be used as a medical expense to qualify for this deduction.~~

(b) ~~If your remaining resources, after the deduction in section (1)(a) are still over the standard, you are ineligible until your resources are below the standard.~~

(e)), we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.

(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through (~~(388-513-1366)~~) 388-513-1365.

(d) (~~(Equity in your home is five hundred thousand dollars or less as)~~) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(~~((2))~~) (3) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

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

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

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

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

**WAC 388-515-1514 How does the department determine how much of my income I must pay towards the cost of my (~~(care)~~) DDD waiver services if I am not eligible for medicaid under a categorically needy program (~~((CN-P))~~) (CN) listed in WAC 388-515-1512(1)?** If you are not eligible for medicaid under a categorically needy program (~~((CN-~~

P)) (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the ADSA room and board rate described in (<http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>) <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(3) (~~Income that remains after the allocation~~) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

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

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

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

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

(ii) Consists of a combined total of both:

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

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

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

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

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

(V) The food assistance standard utility allowance (~~for long term care services this is set at the standard utility allowance (SUA) for a four-person household~~);) (SUA) provided

the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

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

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

(ii) May be greater than the amount in subsection (d)(i) only when:

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

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

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

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

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

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

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

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

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

(a) When you live at home, you keep the cash grant amount authorized under the (~~general assistance~~) ABD cash program;

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

and board standard described in (<http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>) <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) ~~((The combination of the))~~ You may have to pay third party resources (TPR) described in WAC 182-501-0200 in addition to room and board ((amount)) and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.

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

**WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003 through March 31, 2012.** Effective 4/1/2012 home and community based services authorized by home and community services (HCS) combines the categorically needy and medically needy programs described in WAC 388-515-1505 and 388-515-1508.

This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for medicaid personal care or the COPEs program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC ~~((388-475-0050))~~ 182-514-0050;

(d) Requires the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0400, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

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

(g) Has been determined to be in need of waiver services as described in WAC 388-106-0410;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

(i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, and 388-513-1365 ((and 388-513-1366)); and

(j) Meets the resource and income requirements described in subsections (2) through (6).

(2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350;

(3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

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

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

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

(iii) Necessary medical care covered under the state's medicaid plan.

(b) As long as the incurred medical expenses:

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

(ii) Have not been used to satisfy a previous spend down liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNRW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except medicare premiums.

(6) If the client's countable income is:

(a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC 388-106-0435;

(b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC 388-106-0435.

(7) The portion of a client's countable income over the department-contracted rate is called "excess income."

(8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.

(9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505. (Long-term care standards can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources described in WAC 388-513-1350;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources described in WAC 388-513-1350.

AMENDATORY SECTION (Amending WSR 07-03-087, filed 1/18/07, effective 2/18/07)

**WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004 through March 31, 2012. Effective 4/1/2012 home and community based services authorized by home and community services (HCS) combines the categorically needy and medically needy programs described in WAC 388-515-1505 and 388-515-1508.**

This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNIW, a client must:

(a) Not meet financial eligibility for medicaid personal care or the COPEs program;

(b) Be eighteen years of age or older;

(c) Meet the SSI-related criteria described in WAC ((388-475-0050(1))) 182-512-0050(1);

(d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Have attained institutional status as described in WAC 388-513-1320;

(g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;

(h) Be able to live at home with community support services and choose to remain at home;

(i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364(7) and 388-513-1365 ((and 388-513-1366)); and

(j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350.

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be

at or below the resource standard described in WAC 388-513-1350.

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; or

(iii) Necessary medical care covered under the state's medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

(iv) Have not previously been used to reduce excess resources;

(v) Have not been used to reduce client responsibility toward cost of care; and

(vi) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the effective one-person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the effective one-person MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the effective one-person MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the effective one-person MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; and

(iii) Necessary medical care covered under the state's medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person federal poverty level (FPL) described in WAC 388-478-0075(4);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

**WSR 12-16-027**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed July 25, 2012, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-008 [12-05-086].

Title of Rule and Other Identifying Information: The department is amending and adopting new rules within the following chapters to implement Initiative 1163, related to

caregiver training requirements: Chapter 388-71 WAC, Home and community services and programs and chapter 388-112 WAC, Residential long-term care programs.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on September 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 25, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 25, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 4, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the new language in chapters 388-71 and 388-112 WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW and to revise the implementation effective dates as directed by Initiative 1163 and subsequently ESHB 2314. Chapter 74.39A WAC requires training for long-term care workers which includes seventy-five hours of entry-level training and also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually. ESHB 2314 also allows for certified home care aides to be delegated nursing tasks and this was also added to these WACs.

Reasons Supporting Proposal: Initiative 1163, enacted by the people in November 2011, requires implementation of these rules effective beginning January 7, 2012 (unless otherwise specified). Emergency rules were filed to implement the effective dates as WSR 12-05-100 and an emergency rule extension was filed as WSR 12-13-090 on June 19, 2012.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: Chapter 74.39A WAC [RCW].

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, aging and disability services administration, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Martin Yates, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2540; and Enforcement: DSHS.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is adopting amendments to chapters 388-71 and 388-112 WAC as expressly required by Initiative 1029 and subsequent Initiative 1163. These rules are consistent with the training and certification requirements set forth in those initiatives, there-

fore pursuant to RCW 19.85.025(3) and 34.05.328 (5)(b)(v), a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis is required as this rule is exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

July 24, 2012

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-71-0500 What is the purpose of ((WAC 388-71-0500 through [388-71-05952] [388-71-05909])) this chapter?** ((A client/legal representative may choose an individual provider or a home care agency provider. The intent of WAC 388-71-0500 through [388-71-05952] [388-71-05909]) The purpose of this chapter is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-106-0010;

(2) Qualifications of a long-term care worker employed by a home care agency ((provider)), as defined in WAC 388-106-0010 and chapter ((246-336)) 246-335 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency ((provider)) long-term care worker;

(4) Training requirements for an individual provider and home care agency ((provider)) long-term care worker.

(5) Client's options for obtaining a long-term care worker. A client, as described in WAC 388-71-0836 eligible to receive long-term care services, or his/her legal representative on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW 74.39A.055 and 43.20.710.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

**WAC 388-71-0505 How does a client hire an individual provider?** The client, or legal representative:

(1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider;

(2) Establishes an employer/employee relationship with the individual provider; and

(3) May receive assistance from the social worker/case manager or other resources in this process.

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

**WAC 388-71-0510 How does a person become an individual provider?** In order to become an individual provider, a person must:

(1) Be eighteen years of age or older;

(2) Provide the social worker/case manager/designee with:

(a) A valid Washington state driver's license or other valid picture identification; and either

(b) A Social Security card; or

(c) Proof of authorization to work in the United States.

(3) ~~((Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW;~~

~~(a) Preliminary results may require a thumb print for identification purposes;~~

~~(b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.~~

~~(4)) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.~~

~~(4) Effective January 8, 2012, be screened through the national fingerprint-based background check, as required by RCW 74.39A.056.~~

~~(5) Results of background checks are provided to the department and the employer or potential employer unless otherwise prohibited by law or regulation for the purpose of determining whether the person:~~

~~(a) Is disqualified based on a disqualifying crime, a pending charge for a disqualifying crime or negative action; or~~

~~(b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.~~

~~(6) Disqualifying crimes and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).~~

~~(7) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.~~

~~(8) The department may require an individual provider to have a Washington state name and date of birth background check or national fingerprint-based background check, or both, at any time.~~

~~(9) Sign a home and community-based service provider contract/agreement to provide services to a COPES, ((MNIW,)) PACE, WMIP, or medicaid personal care client, or sign a contract as an individual provider to provide services to a New Freedom waiver, WMIP, or PACE client under chapter 388-106 WAC.~~

NEW SECTION

**WAC 388-71-0512 What is included in Washington state's name and date of birth background check and the national fingerprint-based background check?** (1) Washington state's name and date of birth background check includes a check of:

(a) Records contained in databases maintained by the Washington state patrol, including records of:

- (i) Pending charges; and
- (ii) Criminal conviction.

(b) Records maintained:

(i) By the Washington state department of corrections; and

(ii) By the Washington state administrative office of the courts judicial information system.

(c) Records of negative actions, final findings, or civil adjudication proceedings of any agency or sub-agency including, but not limited to:

- (i) DSHS adult protective services;
- (ii) DSHS residential care services;
- (iii) DSHS children's protective services;
- (iv) The Washington state department of health;
- (v) The nursing assistant registry; and

(iv) Any pending charge, criminal conviction, civil adjudicative proceeding and/or negative action disclosed by the applicant.

(2) The national fingerprint-based background check includes a check of records maintained in the:

- (a) Federal Bureau of Investigation; and
- (b) National sex offender's registry.

(3) A "civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds any agency finding of, domestic violence, abuse, sexual abuse, exploitation, financial exploitation, neglect, abandonment, violation of a child or vulnerable adult under any provision of law, including but not limited to chapters 13.34, 26.44, or 74.34 RCW or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(4) A "negative action" includes the denial, suspension, revocation, or termination of a license, certification, or contract for the care of children, as defined in RCW 26.44.020, or vulnerable adults, as defined in RCW 74.34.020, for non-compliance with any state or federal regulation.

(5) Except as prohibited by federal law, results are shared with the employer or prospective employer and with the department of health as authorized.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

**WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency ((provider)) licensed by the department of health?** In order to be a long-term care worker employed by a home care agency ((provider)), a person must ((complete the department's criminal conviction background inquiry appli-

cation, which is submitted by the agency to the department. This includes an FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years));

(1) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.

(2) Effective January 8, 2012, be screened through the national fingerprint-based background check, as required by RCW 74.39A.056.

(3) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying crime, a pending charge for a disqualifying crime, or negative action; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(4) Disqualifying crimes and negative actions are those listed in WAC 388-71-0540 (4), (5) and (6).

(5) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(6) The department may require a long-term care worker to have a Washington state name and date of birth background check or national fingerprint-based background check, or both, at any time.

NEW SECTION

**WAC 388-71-0514 Can an individual provider or licensed home care agency long-term care worker work pending the outcome of the national fingerprint-based background check?** An individual provider or licensed home care agency long-term care worker may work up to one hundred twenty days pending the outcome of the national fingerprint-based background check provided that the person is not disqualified as a result of Washington state's name and date of birth background check or for character, competence, or suitability.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

**WAC 388-71-0515 What are the responsibilities of an individual provider ((or home care agency provider)) when ((employed to provide care)) providing services to a client?** An individual provider ((or home care agency provider)) must:

(1) Understand the client's plan of care that is signed by the client or legal representative ((and social worker/case manager)), and which may be translated or interpreted, as necessary, for the client ((and the provider));

(2) Provide the services as outlined on the client's plan of care, as ((defined)) described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and (differences) unique needs in providing care;

(4) Contact the ~~((client's))~~ client, client's representative and case manager when there are changes ~~((which))~~ that affect the personal care and other tasks listed on the plan of care;

(5) Observe ~~((the client for))~~ and consult with the client or representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately ~~((if))~~ in the event of the ((client dies)) client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider ~~((or home care agency))~~ will no longer provide services. ~~((Notification to the client/legal guardian))~~ The individual provider must:

(a) Give at least two weeks' notice, and

(b) ~~((Be))~~ Notify the client or legal guardian in writing; and

(c) Notify the client's case manager.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

~~((12) A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.))~~

#### NEW SECTION

**WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client?** In providing care to a client, a home care agency must:

(1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be translated or interpreted, as necessary, for the client;

(2) Provide services as outlined in a client's plan of care, as described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and unique needs in providing care;

(4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;

(5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately in the event of the client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client;

(9) Notify the department/AAA when the home care agency will no longer provide services. The home care agency must:

(a) Give at least two weeks' notice; and

(b) Notify the client or legal guardian in writing; and

(c) Notify the case manager.

(10) Comply with time keeping requirements, and keep accurate time sheets that are accessible to the appropriate department or designee staff; and

(11) Comply with all applicable laws and regulations.

#### NEW SECTION

**WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency long-term care worker is a family member of the client and the client is receiving in-home medicaid-funded personal care or DDD respite services?** A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

**WAC 388-71-0520 ~~((Are there))~~ What are the training requirements for an individual provider or a home care agency ~~((provider of an adult client))~~ long-term care worker?** An individual provider or a home care agency ~~((provider for an adult client))~~ long-term care worker, hired on or after January 7, 2012, must meet the training requirements ~~((in))~~ described in WAC ((388-71-05665)) 388-71-0836 through ((388-71-05865 and WAC 388-71-0801 through 388-71-0826)) 388-71-1006. These training requirements also apply to individual providers or home care agency long-term care workers who were hired before January 7, 2012, if they did not complete prior training requirements within one hundred twenty days of hire and they want to be reinstated to work as a long term care worker. These training requirements and certification if required must be met prior to reinstating these individual to work as a long term care worker.

#### NEW SECTION

**WAC 388-71-0523 What are the training/certification requirements for individual providers and home care agency long-term care workers?**

Who	Status	Orientation Training	Safety Training	Basic Training	Continuing Education	Certification HCA-C
(1) An individual provider who is a licensed, certified health care professional	RN, LPN, CN-A, and allied health professionals listed in WAC 388-71-0901	Not required	Not required	Not required	Required. Ten hours through June 30, 2012 Twelve hours from July 1, 2012 forward per WAC 388-71-0990 and 388-71-0991	Not required
(2) An individual provider or home care agency long term care worker with specific employment history.	Employed as a long term care worker at some point between January 1, 2011 and January 6, 2012 and who completed the basic training requirements in effect on date of his or her hire. WAC 388-71-0840.	Not required	Not required	Not required	Required. Ten hours through June 30, 2012. Twelve hours from July 1, 2012 forward per WAC 388-71-0990 and 388-71-0991.	Not required
(3) Individual provider/home care agency long term care worker.	Contracted with the department OR been hired by a licensed home care agency to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2).	Required. Two hours per WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Seventy hours per WAC 388-71-0870 and 388-71-0875.	Required. Twelve hours per WAC 388-71-0990 and 388-71-0991.	Required per WAC 388-71-0975.
(4) An individual provider with limited hours.	Contracted individual providing twenty hours or less of care for one person per calendar month and does not meet criteria in (1) or (2).	Required. Two hours per WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Thirty hours per WAC 388-71-0880.	Not required prior to June 30, 2014.	Not required
(5) Parent, step-parent, or adoptive parent as individual provider.	Department paid individual providing care for his or her adult child <b>ONLY</b> and <b>receiving services through the division of developmental disabilities</b> (WAC 388-71-0890) and not exempt under (1) or (2).	Required. Two hours per WAC 388-71-0895.	Required. Three hours per WAC 388-71-0895.	Required. Seven hours per WAC 388-71-0890.	Not required	Not required
(6) Biological, step, or adoptive parent/ adult child as individual provider.	Who is a department paid individual providing care <b>ONLY</b> to his or her child or parent, and does not meet criteria in (5) and is not exempt under (1) or (2).	Required. Two hours per WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Thirty hours per WAC 388-71-0880.	Required for adult child per WAC 388-71-0990 and 388-71-0991. Not required for parent provider per WAC 388-71-1001.	Not required.

**AMENDATORY SECTION** (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

**WAC 388-71-0540 When will the department, AAA, or department designee deny payment for services of an individual provider or home care agency ((provider)) long-term care worker?** The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.

The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency ((provider)) long-term care worker who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the depart-

ment pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC ((388-478-0030)) 388-478-0020;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home;

(4) Has a pending disqualifying charge, been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.-842 or of a crime relating to drugs as defined in RCW 43.43.-830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

~~(7) ((Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;~~

~~(8))~~ Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

~~((9))~~ (8) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(9) Does not successfully complete applicable training requirements, within one hundred twenty days of hire or the begin date of authorization or within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890, and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe and:

(a) If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed.

(b) If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.

(10) Does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975:

(11) Has had a home care aide certification denied, suspended, or revoked and is not eligible to work until his or her certification has been reissued;

(12) When the client's needs are already being met on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(13) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of a home care agency long-term care worker).

In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551(~~and 388-71-0556~~).

#### NEW SECTION

**WAC 388-71-0543 When may the department, AAA, or department designee deny payment for the services of an individual provider?** In addition to mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment for the services of an individual provider who:

(1) Has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution, even though it has been more than three years since the conviction;

(b) Forgery or theft in the second degree, even though it has been more than five years since the conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a client; or

(d) Any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;

(13) Has a pending charge for a disqualifying crime.

#### NEW SECTION

**WAC 388-71-0544 When may the department, AAA, or department designee deny payment to a home care agency for the services of a long-term care worker that it employs?** In addition to mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment to a home care agency for services provided to a department client by a home care agency long-term care worker that it employs, who:

(1) Has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution, even though it has been more than three years since the conviction;

(b) Forgery or theft in the second degree, even though it has been more than five years since the conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a client; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;

(13) Has a pending charge for a disqualifying crime.

**AMENDATORY SECTION** (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-71-0546** When ~~((can))~~ **may** the department, AAA, or ~~((managed care entity))~~ **department designee reject ((the client's)) your choice of an individual provider?** The department, AAA, or ~~((managed care entity))~~ **department designee** may reject ~~((a client's))~~ **your** request to have a family member or other person serve as ~~((his or her))~~

**your** individual provider if the case manager has a reasonable, good faith belief that the person **is or will be** unable to appropriately meet ~~((the client's))~~ **your** needs. Examples of circumstances indicating an inability to meet ~~((the client's))~~ **your** needs ~~((could))~~ include, ~~((without limitation))~~ **but are not limited to:**

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence **committed by the individual provider**, no-contact orders **entered against the individual provider**, or criminal conduct **committed by the individual provider** (whether or not the conduct is disqualifying under ~~((RCW 43.43.830 and 43.43.842))~~ **WAC 388-71-0540**);

(3) A report from ~~((the client's health care provider or other))~~ **any** knowledgeable person that the ~~((requested))~~ **individual** provider lacks the ability or willingness to provide adequate care;

(4) **The individual provider has** other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical **for the individual provider** to provide services as they are needed and outlined in ~~((the client's))~~ **your** service plan.

**AMENDATORY SECTION** (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-71-0551** When ~~((can))~~ **may** the department, AAA, or ~~((managed care entity))~~ **department designee terminate or summarily suspend an individual provider's contract?** (1) The department, AAA, or ~~((managed care entity))~~ **department designee** may take action to terminate an individual provider's ~~((contract if the provider's))~~ **home and community-based service provider contract/agreement to provide services to a COPEs, or medicaid personal care client, or terminate a contract to an individual provider to provide services to a New Freedom waiver, WMIP, or PACE client under chapter 388-106 WAC, under the following circumstances:**

**(a) The provider's home care aide certification has been revoked; or**

**(b) The provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being.**

**(c) The department has determined that the provider lack the character, competence or suitability necessary to protect the client's health, safety or well-being.**

(2) The department, AAA, or ~~((managed care entity))~~ **department designee** may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client ~~((could))~~ include, ~~((without limitation))~~ **but are not limited to:**

~~((+))~~ **(a) The individual provider has committed domestic violence or abuse, neglect, abandonment, or exploitation of a ((minor)) child, as defined in RCW 26.44.020 or a vulnerable adult, as defined in RCW 74.34.020;**

~~((2))~~ ~~Using or being~~) (b) The individual provider uses or is under the influence of alcohol or illegal drugs during working hours;

~~((3))~~ (c) The individual provider engages in other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

~~((4))~~ (d) A report from the client's health care provider that the client's health is negatively affected by inadequate care being provided by the individual provider;

~~((5))~~ (e) A complaint from the client or client's representative that the client is not receiving adequate care from the individual provider;

~~((6))~~ (f) The ~~(absence of)~~ individual provider's failure to engage in essential interventions identified in the service plan, such as medications or medical supplies; and/or

~~((7))~~ (g) The individual provider's failure to respond appropriately to emergencies.

(3) The department, AAA or department designee may otherwise terminate the individual provider's contract for either default or convenience in accordance with the terms of the contract.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

**WAC 388-71-0560 What are the client's rights if the department denies, terminates, or summarily suspends an individual provider's contract?** (1) If the department denies, terminates, or summarily suspends the individual provider's contract, the client has the right to:

~~((1-A fair))~~ (a) An administrative hearing to appeal the decision, ~~(per)~~ as described in chapter 388-02 WAC, and

~~((2))~~ (b) Receive services from another currently contracted individual provider or home care agency ~~(provider)~~ long-term care worker, or ~~(other options)~~ to receive services through other programs the client is eligible for ~~(, if a contract is summarily suspended)~~.

~~((3))~~ (2) The hearing rights ~~(afforded)~~ provided under this section and WAC 388-71-0561 are ~~(these)~~ rights of the client ~~(, not)~~. The individual provider does not have a right to appeal.

#### NEW SECTION

**WAC 388-71-0561 When does an individual provider have the right to an administrative hearing and how can a hearing be requested?** (1) An individual provider has the right to an administrative hearing when the department denies payment to the individual provider because:

(a) He or she has not been certified by the department of health as a home care aide within the required timeframe; or

(b) If exempted from certification, he or she has not completed required training within the required timeframe.

(2) An individual provider has the right to an administrative hearing when the department terminates the individual provider's contract, or takes other enforcement measures against the individual provider because:

(a) He or she has not completed required training within the required timeframe.

(b) His or her certification as a home care aide has been revoked by the department of health.

(3) In an administrative hearing challenging DSHS action to deny payment to an individual provider or to terminate the contract of an individual provider, the individual provider may not challenge the action by the department of health affecting the individual provider's certification. Action by the department of health affecting the individual provider's certification must be challenged in a department of health hearing, as provided in department of health rules.

(4) To request an administrative hearing, an individual provider must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the individual provider.

(5) The individual provider should keep a copy of the request.

~~(6) ~~(Chapters 34.05 and 74.39A RCW, chapter 388-02 WAC, and the provisions of this chapter govern any administrative hearing under this section. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail)~~ The appeal process will be governed by the Administrative Procedures Act (chapter 34.05 RCW, RCW 74.39A.085, chapter 388-02 WAC and this chapter. If there is a conflict between chapter 388-02 WAC and this chapter, this chapter will govern.~~

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The unnecessary strikethrough and underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-71-0562 When does a medicaid contracted home care agency have the right to an administrative hearing and how can a hearing be requested?** (1) A medicaid contracted home care agency has the right to an administrative hearing when the department terminates its contract or takes other enforcement action related to its contract because the home care agency:

(a) Knowingly employs a long-term care worker who has not completed training within the required timeframe.

(b) Knowingly employs a long-term care worker who does not meet the certification requirements or whose certification has been revoked by the department of health.

(2) In an administrative hearing challenging DSHS or department designee action to terminate the contract or challenge some other enforcement against its contract, a medicaid contracted home care agency may not challenge the action by the department of health affecting the home care aide certification of a long-term care worker employed by the home care agency. Action by the department of health affecting the long-term care worker's certification must be challenged in a department of health hearing, as provided in department of health rules.

(3) To request an administrative hearing, a home care agency must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the

department's notice letter is served upon the home care agency.

(4) The home care agency should keep a copy of the request.

(5) The appeal process will be governed by the Administrative Procedures Act (chapter 34.05 RCW), RCW 74.39A.085, chapter 388-02 WAC and this chapter. If there is a conflict between chapter 388-02 WAC and this chapter, this chapter will govern.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? "Care team"** includes the client and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the client, however, the client directs the care plan.

**"Certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

**"Challenge test"** means a challenge test taken for specialty training, without first taking the class for which the test is designed and can only be used when basic training is not required.

**"Client"** means an individual receiving in-home services.

**"Competency"** defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

**"Competency testing"** is evaluating a trainee to determine if he or she can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training and the specialty trainings. Training programs may integrate competency testing within their approved curriculums.

**"DDD"** refers to the division of developmental disabilities.

**"Department"** or **"DSHS"** refers to the department of social and health services.

**"Enhancement"** is additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, on-line materials, and/or additional student activities.

**"Functionally disabled person"** or **"person who is functionally disabled"** means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such

as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

**"Guardian"** means an individual as defined in chapter 11.88 RCW.

**"Individual provider"** means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under medicaid personal care, community options program entry system (COPES), chore services, or respite care program, or to provide respite care or residential services and supports to person with developmental disabilities under chapter 71A.12 RCW or to provide respite care as defined in RCW 74.41.030.

**"Learning objectives"** are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

**"Long-term care worker"** includes all persons providing paid, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities, and supported living providers.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 CFR Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

**"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is,

provided because a person is a functionally disabled person as defined in this chapter.

**"Training entity"** means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

**"Training partnership"** means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-71-0839 What long-term care workers are exempt from the seventy hour, thirty hour or twelve hour basic training requirement?** The following long term care workers are exempt from the basic training requirement:

(1) A person already employed as a long term care worker on January 6, 2012, who completed the basic training requirements in effect on the date of his or her hire;

(2) A person employed as a long term care worker on January 6, 2012, who completes within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long term care worker at some point between January 1, 2011 and January 6, 2012, this exemption will be verified at time of hire or service begin date;

(4) An individual provider who worked as a respite provider or who provided care to a minor between January 1, 2011 and January 6, 2012, and who completed the training requirements in effect on the date of his or her hire;

(5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(6) Nursing assistants certified under chapter 18.88A RCW;

(7) Certified counselors under chapter 18.19 RCW;

(8) Speech language pathologists or audiologists under chapter 18.35 RCW;

(9) Occupational therapists under chapter 18.59 RCW;

(10) Physical therapists under chapter 18.74 RCW;

(11) A home health aide who is employed by a medicare certified home health agency and has met the requirements of 42 CFR, Part 483.35;

(12) An individual with special education training and has an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010;

(13) Individuals who are in a training program to become credentialed in a category listed from subsection (5) through (10) must compete this training program within one hundred twenty days of hire or service begin date to meet this exemption.

(14) Parent providers as described in WAC 388 71 0890; and

(15) Providers described in WAC 388-71-0880.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### ORIENTATION AND SAFETY TRAINING

#### NEW SECTION

**WAC 388-71-0841 What is orientation?** (1) Orientation is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

(2) The department must approve orientation curricula and instructors.

(3) There is no challenge test for orientation.

#### NEW SECTION

**WAC 388-71-0846 What content must be included in orientation?** Orientation must include introductory information in the following areas:

(1) The care setting and the characteristics and special needs of the population served or to be served;

(2) Basic job responsibilities and performance expectations;

(3) The care plan, including what it is and how to use it;

(4) The care team;

(5) Process, policies, and procedures for observation, documentation and reporting;

(6) Client rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;

(7) Mandatory reporter law and worker responsibilities; and

(8) Communication methods and techniques that can be used while working with a client or guardian, and other care team members.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

#### NEW SECTION

**WAC 388-71-0850 What is safety training?** (1) Safety training is a training of three hours that includes basic safety precautions, emergency procedures, and infection control.

(2) The department must approve safety training curricula and instructors.

(3) There is no challenge test for safety training.

#### NEW SECTION

**WAC 388-71-0855 What content must be included in safety training?** Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

- (a) Proper body mechanics;
- (b) Fall prevention;
- (c) Fire safety;
- (d) In-home hazards;
- (e) Long-term care worker safety; and
- (f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

- (a) Proper hand washing;
- (b) When to wear gloves and how to correctly put them on and take them off;
- (c) Basic methods to stop the spread of infection;
- (d) Protection from exposure to blood and other body fluids;
- (e) Appropriate disposal of contaminated/hazardous articles;
- (f) Reporting exposure to contaminated articles; and
- (g) What to do when sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a client is falling or falls;
- (d) Location of any advanced directives and when they are given; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

#### NEW SECTION

**WAC 388-71-0860 Who must complete orientation and safety training and by when?** Unless exempted in WAC 388-71-0839 (1) through (12), all long-term care workers must complete orientation and safety training prior to providing care to a client.

#### BASIC TRAINING

#### NEW SECTION

**WAC 388-71-0870 What is the seventy hour basic training?** (1) Basic training of seventy hours is training that includes:

- (a) Core competencies; and
- (b) Population specific competencies.

(2) All seventy hour basic training curriculum must be approved by the department and provided by qualified instructors.

(3) The DSHS developed revised fundamentals of caregiving (RFOC) learner's guide may be used to teach core basic training but it must include enhancements which must be approved by the department. Enhancements include:

- (a) Adding more time for workers to practice skills including:
  - (i) The mechanics of completing the skill correctly.

(ii) Client centered communication and problem solving associated with performing the skill.

(iii) The different levels of care required for each skill (independent, supervision, limited, extensive, total).

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common client challenges associated with a skill.

(vi) Disease specific concerns or challenges associated with a skill.

In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training.

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care.

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials and/or activities that:

(i) Are out of the scope of practice for a LTC worker such as content clearly written for registered nurses.

(ii) Are identical to, or a direct replacement of, those already included in RFOC.

(iii) Do not reinforce Washington state laws associated with client rights and client directed care.

(iv) Long-term care workers are not paid to provide.

(v) Are written above a high school reading level.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(5) The training entity must establish a way for the long-term care worker to ask the instructor questions.

(6) There is no challenge test for basic training.

#### NEW SECTION

**WAC 388-71-0875 Who must complete the seventy hour basic training and by when?** Unless exempt from training in WAC 388-71-0839 (1) through (12), all long-term care workers must complete core and population specific competencies within one hundred twenty days of:

(1) The date of hire for home care agency long-term care workers; or

(2) From the begin date of the authorization to provide department-paid in-home services for a client for individual providers.

#### NEW SECTION

**WAC 388-71-0880 Who must take the thirty hour training instead of the seventy hour basic training and when must it be completed?** Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (12), the thirty hour basic training under WAC 388-71-0885, must be completed within one hundred twenty days from the begin date of the authorization for provision to provide

department paid, in-home services by an individual provider, who is caring only for:

- (1) His or her biological, step, or adoptive child or parent.
- (2) One department client for twenty hours or less in any calendar month.

#### NEW SECTION

##### **WAC 388-71-0885 What is the thirty hour training?**

The thirty hour training is a subset of the seventy hour basic training that must include core and population specific basic training. Topics completed in the subset must be on topics relevant to the care needs of the client(s). There is no challenge test for the thirty hour training.

#### NEW SECTION

**WAC 388-71-0888 What are the training and certification requirements for an individual provider who is initially hired to provide care for one person, if the authorized monthly hours fluctuate of he or she begins working for more than one department client?** (1) If an individual provider is initially hired to provide care for one client and the authorized hours are for more than twenty hours he or she will have to complete the seventy hours of basic training, become certified and complete continuing education even if the authorized monthly hours are later reduced to twenty hours or fewer.

(2) If the individual provider initially starts working for one client and the authorized monthly hours are twenty or fewer, he or she will have to complete the seventy hours of basic training, become certified, and complete continuing education whenever:

- (a) The authorized hours increase to more than twenty hours; or
- (b) He or she begins to work for a second department client.
- (3) Under these circumstances from the point of this change, the individual provider will:
  - (a) Have an additional one hundred twenty days to complete the seventy hours of training and additional one hundred fifty days to become certified;
  - (b) Be required to complete continuing education under WAC 388-71-0990; and
  - (c) Be required to continue to comply with the higher level of training requirements, even if the monthly authorized hours are later reduced to twenty or fewer hours.

#### NEW SECTION

**WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through DDD?** Unless exempt from the basic training requirements as defined in WAC 388-71-0839 (1) through (12), a natural, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS division of developmental disabilities must complete the twelve hour parent provider training, as described in WAC 388-71-0895, within one

hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

#### NEW SECTION

**WAC 388-71-0895 What is the twelve hour parent provider training?** (1) The twelve hour parent provider training must include five hours of orientation and safety training as described in WAC 388-71-0841 and 388-71-0850. The remaining seven hours will cover the following topics:

- (a) Medicaid personal care;
- (b) Assessments completed by the division of developmental disabilities;
- (c) Community resources;
- (d) State and federal benefits;
- (f) Networking; and
- (g) Client self-determination.
- (2) There is no challenge test for this training.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-71-0906 What topics must be taught in the core competencies of basic training?** Basic training must include all of the competencies under WAC 388-71-0911 for the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Client rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (6) Client directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

#### NEW SECTION

**WAC 388-71-0911 What are the competencies and learning objectives for the core competencies of basic training?** The core competencies describe the behavior and skills that a long-term care worker should exhibit when working with clients. Learning objectives are associated with each competency.

- (1) Regarding communication, communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members:
  - (a) Recognize how verbal and nonverbal cues impact communication with the client and care team;

(b) Engage and respect the client through verbal and nonverbal communication;

(c) Listen attentively and determine that the client understands what has been communicated;

(d) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;

(e) Utilize communication strategies to deal with difficult situations; and

(f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:

(a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;

(b) Promote dignity, privacy, encourage, and support a client's maximum independence when providing care; and

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;

(d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and

(b) Identify common signs and symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding his or her care:

(a) Describe a worker's role in client directed care including determining, understanding, and supporting a client's choices;

(b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and

(d) Report concerns when a client refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a client; and

(b) Take proper steps to assist when a client is falling or has fallen.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a client's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;

(c) Identify changes in a client's physical, mental, and emotional state;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created, used and modified;

(g) Use a client's care plan to direct a worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

- (i) Helping an individual walk;
- (ii) Transferring an individual from bed to wheelchair;
- (iii) Turning and repositioning an individual in bed;
- (iv) Providing mouth care;
- (v) Cleaning and storing dentures;
- (vi) Shaving a face;
- (vii) Providing fingernail care;
- (viii) Providing foot care;
- (ix) Providing a bed bath;
- (x) Assisting an individual with a weak arm to dress;
- (xi) Putting knee-high elastic stockings on an individual;
- (xii) Providing passive range of motion for one shoulder;
- (xiii) Providing passive range of motion for one knee and ankle;

- (xiv) Assisting an individual to eat;
- (xv) Assisting with peri-care;
- (xvi) Assisting with the use of a bedpan;
- (xvii) Assisting with catheter care;
- (xviii) Assisting with condom catheter care; and
- (xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain privacy and dignity, support the client's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the care plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible), and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for clients and long-term care workers.

Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a client and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

#### NEW SECTION

**WAC 388-71-0916 What topics may be taught in the population specific competencies of basic training?** (1) Population specific training may include but is not limited to one or more of the following topics. Which topic(s) to include in population specific training is based on the needs of the population(s) served or to be served.

(a) Dementia;

(b) Mental health;

(c) Developmental disabilities;

(d) Young adults with physical disabilities; and

(e) Aging and older adults.

(2) Specialty training per WAC 388-112-0110 may be used to meet the population specific component of basic

training. The training program will provide a department issued specialty certificate in these instances.

#### NEW SECTION

**WAC 388-71-0921 What are the population specific competencies?** There are no DSHS mandatory competencies or learning objectives for population specific training. The training entity developing the training determines the competencies and learning objectives that best meet the care needs of the population(s) served.

Competencies and learning objectives described for developmental disability specialty training in WAC 388-112-0122, dementia specialty training in WAC 388-112-0132, mental health specialty training in WAC 388-112-0142, aging and older adults in WAC 388-112-0091 and young adults with physical disabilities in WAC 388-112-0083 may be used to develop the population specific training in these topic areas. This is not a requirement.

Competencies and learning objectives used to develop the training must be submitted with the curricula when sent to DSHS for approval as described in WAC 388-71-1026.

#### NEW SECTION

**WAC 388-71-0931 What other methods of training may count towards the seventy hour basic training requirement?** On-the-job training, as defined in WAC 388-71-0932, provided after July 1, 2012 may count towards the seventy hour basic training requirement.

### ON-THE-JOB TRAINING

#### NEW SECTION

**WAC 388-71-0932 What is on-the-job training?** (1) Effective July 1, 2012, on the job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a client versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as described in WAC 388-71-1055, who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to clients; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on the job training may count for up to twelve hours toward the completion of basic training requirements.

(5) The training program shall offer department approved on-the-job training as part of the seventy hour training.

**NURSE DELEGATION CORE AND SPECIALIZED  
DIABETES TRAINING**

**NEW SECTION**

**WAC 388-71-0936 What is nurse delegation core training?** (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, or certified home care aide must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

**NEW SECTION**

**WAC 388-71-0941 What is specialized diabetes nurse delegation training?** (1) Specialized diabetes nurse delegation training is the required course for nursing assistants, certified or registered, and certified home care aide who will be delegated the task of insulin injections.

(2) The specialized diabetes nurse delegation training consists of three modules which are diabetes, insulin, and injections.

(3) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes" may be used for the specialized diabetes nurse delegation training.

(4) DSHS approves the instructors for the specialized diabetes nurse delegation training prior to an instructor offering a course.

**NEW SECTION**

**WAC 388-71-0946 Who is required to complete the nurse delegation core training, and when?** Before performing any delegated task, a long-term care worker must:

(1) Be a:

(a) Certified home care aide under chapter 18.88B RCW;

or

(b) Nursing assistant certified under chapter 18.88A RCW; or

(c) If exempt from the home care aide certification, become a nursing assistant registered and complete the core competencies of basic training, unless the twenty-eight hours of revised fundamentals of care or a department approved alternative was already completed.

(d) If nurse delegation is needed to implement a care plan earlier than home care aide certification can be obtained, become a nursing assistant registered and complete core competencies of basic training.

(2) Successfully complete "Nurse Delegation for Nursing Assistants" training.

**NEW SECTION**

**WAC 388-71-0951 Who is required to complete the specialized diabetes nurse delegation training, and when?** Specialized diabetes nurse delegation training is required before a certified home care aide, or a certified or registered nursing assistant, who meets the qualifications under WAC 388-71-0946, may be delegated the task of insulin injections.

**NEW SECTION**

**WAC 388-71-0953 Can nurse delegation core and specialized diabetes training occur in the same year as basic training?** Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards basic training.

**NEW SECTION**

**WAC 388-71-0956 Is competency testing required for the nurse delegation core training and specialized diabetes training?** Passing the DSHS competency test is required for successful completion of nurse delegation core training and specialized diabetes training, as provided in WAC 388-71-1106 through 388-71-1130.

**DOCUMENTATION REQUIREMENTS**

**NEW SECTION**

**WAC 388-71-0970 What documentation is required for completion of each training?** Orientation, safety, basic training, including core and population specific, the thirty hour training, the twelve hour parent provider training, on-the-job training, continuing education, and nurse delegation core and specialized diabetes training, must be documented by a certificate(s) or transcript or proof of completion of training issued by a qualified instructor or qualified training entity that includes:

(1) The name of the trainee;

(2) The title of the training as approved by the department;

(3) For continuing education the department assigned curriculum approval code;

(4) The number of hours of the training;

(5) The name and identification number of the training entity;

(6) The instructor's name. For basic core training, the instructor's name and identification number;

(7) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and

(8) The completion date of the training.

The long-term care worker must retain the original certificate or transcript for proof of completion of the training. A home care agency must keep a copy of the certificate or transcript on file.

#### NEW SECTION

**WAC 388-71-0973 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification?** (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity who has provided or verified that a total of seventy-five hours of training has occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate or transcript can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a certificate issued by an approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same training entity, then an approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education.

(4) The long-term care worker, certified home care aide, and their employer must retain the original seventy-five hour training certificate or transcript and any twelve-hour continuing education training certificates as long as the worker is employed and up to three years after termination of employment. Training entities must keep a copy of these certificates on file for six years.

#### HOME CARE AIDE CERTIFICATION

#### NEW SECTION

**WAC 388-71-0975 Who is required to obtain certification as a home care aide, and when?** All long-term care workers, who do not fall within the exemptions under the department of health WAC 246-980-070, must obtain certification within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012.

#### NEW SECTION

**WAC 388-71-0980 Can a home care agency or client employ a long-term care worker who has not completed the training and/or certification requirements?** A home care agency or client cannot employ an individual to work as a long-term care worker if the individual has previously worked as a long-term care worker and has not completed

applicable training and/or certification requirements within the required timeframe. Such individual may be employed by a home care agency or client to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 74.39A.086 to take enforcement action for noncompliance related to training and/or certification requirements.

#### CONTINUING EDUCATION

#### NEW SECTION

##### **WAC 388-71-0985 What is continuing education?**

Continuing education is additional caregiving-related training designed to keep current a person's knowledge and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic, or there is a demonstrated or documented need for retraining. Exceptions to this are first aid, CPR, and blood borne pathogens. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

#### NEW SECTION

##### **WAC 388-71-0990 How many hours of continuing education are required each year?**

(1) From January 1, 2012 through June 30, 2012, individual providers and home care agency long-term care workers whose birth date occurs January 1 through June 30, and the required basic training was previously completed must complete ten hours of continuing education. If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012 for an individual provider or home care agency long term care worker, regardless of their birth date, then the continuing education requirements have been met for 2012.

(2) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110 and 246-112-020(3).

(3) If exempt from certification as described in RCW 18.88B.041, all long-term care workers must complete twelve hours of continuing education per calendar year unless exempt from continuing education as described in WAC 388-71-1001.

(4) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in (1) above or in WAC 388-71-0991 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

**WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing education?** (1) Effective July 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-71-0990 by their birthday.

(2) For long-term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

NEW SECTION

**WAC 388-71-1001 What long-term care workers are exempt from the continuing education requirement?** Unless voluntarily certified as a home care aide, continuing education is not required for:

- (1) Individual providers caring only for his or her biological, step, or adoptive son or daughter; and
- (2) Before June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

NEW SECTION

**WAC 388-71-1006 What kinds of training topics may be covered in continuing education?** Continuing education must be on a topic relevant to the care setting, care needs of clients, or long-term care worker career development. Topics may include but are not limited to:

- (1) Client rights;
- (2) Personal care services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive client behavior support;
- (10) Developing or improving client-centered activities;
- (11) Dealing with wandering;
- (12) Dealing with challenging client behaviors;
- (13) Medical conditions; and
- (14) Nurse delegation core and specialized diabetes.

**CURRICULUM APPROVAL**NEW SECTION

**WAC 388-71-1021 What trainings must be taught with a curriculum approved by DSHS?** (1) Orientation, safety, on-the-job, basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education must be taught with a curriculum approved by DSHS before use.

(2) The nurse delegation core and diabetes training must use only the DSHS curriculum.

NEW SECTION

**WAC 388-71-1026 What must be submitted to DSHS for curriculum approval?** DSHS developed curriculum(s) do not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.

**(1) For orientation and/or safety training:**

(a) Effective January 7, 2012, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing where the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

**(2) For continuing education:**

(a) Effective July 1, 2012, submit a summary that includes the topic, a brief description of what it will cover, and a course outline. Also include the number of training hours, for on line training courses, and submit a description of how the instructor or training will assess that the students have completed the materials and integrated the information being taught. Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval as well as the unique code assigned by the department for each curriculum.

**(3) For basic training, the thirty hour basic training, and the twelve hour parent provider training:**

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training, for the thirty hour basic training, and for the twelve hour parent provider training. When submitting one or both sections of the basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts and books;

(iii) The table of contents or outline of the curriculum including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references, that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

(vi) In addition, for curricula being submitted for the core competency section of the basic training as described in WAC 388-71-0911, the curriculum must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(vii) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

#### NEW SECTION

**WAC 388-71-1031 What is the curriculum approval process for orientation, safety, seventy hour basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education?** (1) Submit the required training application forms and any other materials required for specific curriculums to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s).

(3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.

(5) If after working with the department the reasons why the curriculum is not approved cannot be resolved, the submitter may seek review of the nonapproval decision from the assistant secretary of aging and disability services administration. The assistant secretary's review decision shall be the final decision of DSHS; no other administrative review is available to the submitter.

#### INSTRUCTOR QUALIFICATIONS, APPROVAL, AND RESPONSIBILITIES

#### NEW SECTION

**WAC 388-71-1045 What are a training entity's responsibilities?** The training entity is responsible for:

- (1) Coordinating and teaching classes;
- (2) Assuring that the curriculum used is DSHS-approved and taught as designed;
- (3) Selecting and monitoring qualified guest speakers, where applicable;
- (4) Administering or overseeing the administration of the DSHS competency tests for nurse delegation core, specialized diabetes trainings, dementia specialty, mental health specialty and DDD specialty training;
- (5) Maintaining training records including long-term care worker tests and attendance records for a minimum of six years;
- (6) Reporting training data to DSHS in DSHS-identified timeframes; and
- (7) Issuing or reissuing training certificates to long-term care workers.

#### NEW SECTION

**WAC 388-71-1050 Must training entities and their instructors be approved by DSHS?** All training entities and their instructor(s) for orientation, safety, and continuing education must meet the minimum qualifications under WAC 388-71-1060. All instructors for seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, on-the-job training, nurse delegation core training and nurse delegation specialized diabetes training must meet the minimum qualifications under WAC 388-71-1055.

(1) DSHS must approve and/or contract with a training entity and their instructor(s) to conduct orientation, safety, seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, nurse delegation core training and nurse delegation specialized diabetes training, on-the-job training, and continuing education. DSHS may contract with training entities and their instructor(s) using any applicable contracting procedures.

(2) The training partnership must ensure that its instructors meet the minimum qualifications under this chapter.

#### NEW SECTION

**WAC 388-71-1051 Can DSHS deny or terminate a contract with an instructor or training entity?** (1) DSHS may determine not to accept an offer by a person or organization seeking a contract with DSHS to conduct training programs. No administrative remedies are available to dispute DSHS' decision not to accept an offer, except as may be provided through the contracting process.

(2) DSHS may terminate any training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

#### NEW SECTION

**WAC 388-71-1055 What are the minimum qualifications for an instructor of the seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, on-the-**

**job training, nurse delegation core training, and nurse delegation specialized diabetes training?** An instructor for basic training (core and population specific training), on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training must meet the following minimum qualifications:

- (1) General qualifications:
  - (a) Twenty-one years of age; and
  - (b) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.
- (2) Education and work experience:
  - (a) Upon initial approval or hire, an instructor must:
    - (i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or
    - (ii) Have an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting; or
    - (iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting.
  - (3) Teaching experience:
    - (a) Must have one hundred hours of teaching adults in a classroom setting on topics directly related to the basic training; or
    - (b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements in WAC 388-71-1066.
  - (4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;
  - (5) Instructors who will administer tests must have experience or training in assessment and competency testing; and
  - (6) An instructor for nurse delegation core and specialized diabetes trainings must have a current Washington state RN license in good standing without practice restrictions.

#### NEW SECTION

**WAC 388-71-1060 What are the minimum qualifications for an instructor of orientation, safety, and continuing education?** An instructor of orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

#### NEW SECTION

**WAC 388-71-1066 What must be included in a class on adult education?** A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- (1) Adult education theory and practice principles;
- (2) Instructor facilitation techniques;

- (3) Facilitating learning activities for adults;
- (4) Administering competency testing; and
- (5) Working with adults with special training needs (for example, English as a second language or learning or literacy issues).

#### NEW SECTION

**WAC 388-71-1076 What is a guest speaker, and what are the minimum qualifications to be a guest speaker?** (1) A guest speaker is a person selected by an approved instructor to teach on a specific topic. A guest speaker:

- (a) May only teach a specific subject in which he or she has expertise, background, and experience that establishes his or her expertise on that specific topic;
  - (b) May not teach the entire course;
  - (c) Must not supplant the primary teaching responsibilities of the instructor; and
  - (d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.
- (2) The approved instructor:
- (a) Must ensure the guest speaker meets these minimum qualifications;
  - (b) Maintain documentation of the guest speaker's qualifications and background;
  - (c) Supervise and monitor the guest speaker's performance; and
  - (d) Is responsible for ensuring the required content is taught.
- (3) DSHS does not approve guest speakers.

#### NEW SECTION

**WAC 388-71-1081 What are the requirements for the training partnership to conduct training?** (1) The training partnership must:

- (a) Verify, document using the department's attestation process, keep on file, and make available to the department upon request, that all instructors meet the minimum instructor qualifications in WAC 388-71-1055 and 388-71-1060 for the course they plan to teach;
- (b) Teach using a complete DSHS-developed or approved curriculum;
- (c) When requested by DSHS, notify DSHS in writing of their intent to conduct training prior to providing training, when changing training plans, including:
  - (i) Name and schedule of training(s) the partnership will conduct;
  - (ii) Name of approved curriculum(s) the partnership will use; and
  - (iii) Name of the instructor(s) for only the core basic training.
- (d) Ensure that DSHS competency tests are administered when conducting nurse delegation core or specialized diabetes training;
- (e) Keep a copy of long-term care worker certificates on file for six years and give the original certificate to the trainee;
- (f) Keep attendance records and testing records of long-term care workers trained and tested on file for six years; and

(g) Report training data to DSHS when requested by the department.

(2) The department may conduct a random audit at any time to review training and instructor qualifications.

#### NEW SECTION

**WAC 388-71-1083 Must the department verify that training entities and their community instructors meet the minimum instructor qualifications?** The department through its contracting process must verify that the community instructors meet the minimum qualifications as described in WACs 388-71-1055 and 388-71-1060. The department will conduct random audits of the training provided and of the instructor qualifications.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

#### NEW SECTION

**WAC 388-71-1091 What physical resources are required for classroom training and testing?** (1) Classroom facilities used for classroom training must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning, such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites for nurse delegation core and specialized diabetes training must provide adequate space for testing, comfort, lighting, lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

#### NEW SECTION

**WAC 388-71-1096 What standard training practices must be maintained for classroom training and testing?** The following training standards must be maintained for classroom training and testing:

- (1) Training must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending classroom training must not be expected to leave the class to attend job duties, except in an emergency.

### COMPETENCY TESTING FOR NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

#### NEW SECTION

**WAC 388-71-1106 What components must competency testing include?** Competency testing must include the following components:

- (1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate to the training;
- (2) Written evaluation to show knowledge of the learning objectives included in the training; and
- (3) A scoring guide for the tester with clearly stated scoring criteria and minimum proficiency standards.

#### NEW SECTION

**WAC 388-71-1111 What experience or training must individuals have to be able to perform competency testing?** Individuals who perform competency testing must have documented experience or training in assessing competencies.

#### NEW SECTION

**WAC 388-71-1120 How must competency test administration be standardized?** To standardize competency test administration, testing must include the following components:

- (1) An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee all testing; and
- (2) The tester must follow the DSHS guidelines for:
  - (a) The maximum length of time allowed for the testing;
  - (b) The amount and nature of instruction given long-term care workers before beginning a test;
  - (c) The amount of assistance to long-term care workers allowed during testing;
  - (d) The accommodation guidelines for long-term care workers with disabilities; and
  - (e) Accessibility guidelines for long-term care workers with limited English proficiency.

#### NEW SECTION

**WAC 388-71-1125 What form of identification must long-term care workers show before taking a competency test?** Long-term care workers must show photo identification before taking a competency test.

#### NEW SECTION

**WAC 388-71-1130 How many times may a competency test be taken?** For the trainings under WAC 388-71-0936 and 388-71-0941, competency testing may be taken twice. If the test is failed a second time, the person must retake the course before taking the test for that course again.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-05665	What definitions apply to WAC 388-71-05670 through 388-71-05909?	WAC 388-71-05760	Who may take modified basic training instead of the full basic training?
WAC 388-71-05670	What is orientation?	WAC 388-71-05765	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD?
WAC 388-71-05675	What content must be included in an orientation?	WAC 388-71-05770	What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD?
WAC 388-71-05680	Is competency testing required for orientation?	WAC 388-71-05775	What is continuing education?
WAC 388-71-05685	Is there a challenge test for orientation?	WAC 388-71-05780	How many hours of continuing education are required each year?
WAC 388-71-05690	What documentation is required for orientation?	WAC 388-71-05785	What kinds of training topics are required for continuing education?
WAC 388-71-05695	Who is required to complete orientation, and when must it be completed?	WAC 388-71-05790	Is competency testing required for continuing education?
WAC 388-71-05700	What is basic training?	WAC 388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
WAC 388-71-05705	Is there an alternative to the basic training for some health care workers?	WAC 388-71-05799	What are the documentation requirements for continuing education?
WAC 388-71-05710	What core knowledge and skills must be taught in basic training?	WAC 388-71-05805	What is nurse delegation core training?
WAC 388-71-05715	Is competency testing required for basic training?	WAC 388-71-05810	What knowledge and skills must nurse delegation core training include?
WAC 388-71-05720	Is there a challenge test for basic training?	WAC 388-71-05815	Is competency testing required for nurse delegation core training?
WAC 388-71-05725	What documentation is required for successful completion of basic training?	WAC 388-71-05820	Is there a challenge test for nurse delegation core training?
WAC 388-71-05730	Who is required to complete basic training, and when?	WAC 388-71-05825	What documentation is required for successful completion of nurse delegation core training?
WAC 388-71-05735	What is modified basic training?	WAC 388-71-05830	Who is required to complete nurse delegation core training, and when?
WAC 388-71-05740	What knowledge and skills must be included in modified basic training?		
WAC 388-71-05745	Is competency testing required for modified basic training?		
WAC 388-71-05750	Is there a challenge test for modified basic training?		
WAC 388-71-05755	What documentation is required for successful completion of modified basic training?		

WAC 388-71-05832	What is safety training and is there a challenge test for safety training?		betes nurse delegation training?
WAC 388-71-05835	Who is required to complete safety training, when, and how often must it be completed?	WAC 388-71-05899	What must be included in a class on adult education?
WAC 388-71-05836	Will DSHS deny payment of an individual provider who does not complete safety training?	WAC 388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?
WAC 388-71-05837	What is competency testing?	WAC 388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?
WAC 388-71-05840	What components must competency testing include?		
WAC 388-71-05845	What experience or training must individuals have to be able to perform competency testing?	WAC 388-71-0801	What is specialized diabetes nurse delegation training?
WAC 388-71-05850	What training must include the DSHS-developed competency test?	WAC 388-71-0806	What knowledge and skills must specialized diabetes nurse delegation training include?
WAC 388-71-05855	How must competency test administration be standardized?	WAC 388-71-0811	Is competency testing required for the specialized diabetes nurse delegation training?
WAC 388-71-05860	What form of identification must providers show a tester before taking a competency or challenge test?	WAC 388-71-0816	Is there a challenge test for specialized diabetes nurse delegation training?
WAC 388-71-05865	How many times may a competency test be taken?	WAC 388-71-0821	What documentation is required for successful completion of specialized diabetes nurse delegation training?
WAC 388-71-05870	What are an instructor's or training entity's responsibilities?		
WAC 388-71-05875	Must instructors be approved by DSHS?	WAC 388-71-0826	Who is required to complete the specialized diabetes nurse delegation training, and when?
WAC 388-71-05880	Can DSHS deny or terminate a contract with an instructor or training entity?		
WAC 388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?		
WAC 388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?		
WAC 388-71-05895	What additional qualifications are required for instructors of nurse delegation core training and specialized dia-		

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0001 What ((is)) are the purposes of this chapter?** The ~~((residential long-term care training requirements under this chapter apply to))~~ purposes of this chapter are to describe the following:

(1) ~~((All adult family homes licensed under chapter 70.128 RCW))~~ Training and certification requirements that apply to adult family homes and assisted living facilities on or before January 6, 2012; and

(2) ~~((All boarding homes licensed under chapter 18.20 RCW))~~ Training and certification requirements that apply to adult family homes and assisted living facilities on or after January 7, 2012.

NEW SECTION

**WAC 388-112-0002 To whom do the training requirements apply?** The long-term care worker training requirements under this chapter apply to:

- (1) Adult family home applicants, resident managers, entity representatives, long-term care workers, and volunteers; and
- (2) Assisted living facility administrators, designees, long-term care workers, and volunteers.

NEW SECTION

**WAC 388-112-0003 What are the training and certification requirements for volunteers, long term care workers in adult family homes and assisted living facilities and adult family home applicants?** (1) The following chart provides a summary of training and certification requirements for volunteers, long term care workers in adult family homes and assisted living facilities. The remainder of the rules under this chapter contain a more detailed description of the requirements.

Who	Status	Orientation	Safety/ Orientation training	Basic/Population Specific training	Specialty training	Continuing education	Certification HCA-C
(1) Adult family home resident manager, assisted living facility administrator, or long term care worker in adult family home / assisted living facility.	An RN, LPN, NA-C or allied health care professionals listed in WAC 388-112-0076	Required per WAC 388-112-0015(1); 388-112-0040 (a) and (b)	Not required	Not required	Required per WAC 388-112-0110	Required per WAC 388-112-0200; 388-112-0205	Not required
(2) Adult family home resident manager, or assisted living administrator, or long term care worker in adult family home or assisted living facility.	A long term care worker who was employed on January 6, 2012 or was previously employed sometime between 1/1/2011 and 1/6/2012 and has completed the basic training requirements in effect on his or her hire date. WAC 388-112-0076	Required per WAC 388-112-0015(1); 388-112-0040 (a) and (b)	Not required	Not required	Required per WAC 388-112-0110	Required per WAC 388-112-0200; 388-112-0205	Not required
(3) Adult family home resident manager, or long term care worker in adult family home or assisted living facility.	Employed in an adult family home or assisted living facility and does not meet criteria in (1) or (2) of this table. Meets definition of long term care worker in WAC 388-112-0005.	Not required	Required. Five hours per WAC 388-112-0015(2); 388-112-0040 (2)(a)	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Required. Twelve hours per WAC 388-112-0200; 388-112-0205	Required per WAC 388-112-0106
(4) Adult family home provider	A person who has an adult family home license and meets criteria in (1) or (2). This requirement applies to an entity representative of a licensed entity. WAC 388-76-1000.	Not required	Completed prior to licensing	Completed prior to licensing	Completed prior to licensing	Required. Twelve hours per WAC 388-112-0200; 388-112-0205	Completed prior to licensing

Who	Status	Orientation	Safety/ Orientation training	Basic/Population Specific training	Specialty training	Continuing education	Certification HCA-C
(5) Assisted living facility administrator	A qualified assisted living facility administrator or designee who does not meet criteria in (1) or (2) of this table.	Not required	Required. Five hours per WAC 388-112-0015(2); 388-112-0040 (2)(a)	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Required. Twelve hours per WAC 388-112-0200; 388-112-0205	Required per WAC 388-112-0106
(6) Volunteer staff in adult family home or assisted living facility	An unpaid person	Required per WAC 388-112-0015(1); 388-112-0040 (a) and (b)	Not required	Not required	Not required	Not required	Not required

(2) Summary of the training and certification requirements for adult family home applicants prior to licensure, and resident managers prior to assuming the duties of the position.

Who	Status	Orientation and Safety training	Basic/ Population Specific training	Specialty training	Continuing education	Certification HCA-C
(1) Adult family home applicant	An RN, LPN, ARNP, NA-C, and other allied health professionals as listed in WAC 388-112-0076	Not required	Not required	Required per WAC 388-112-0110	Not required during application process	Not required
(2) Adult family home applicant	A long term care worker employed on January 6, 2012 or was previously employed sometime between 1/1/2011 and 1/6/2012 and has completed the basic training requirements in effect on the date of his or her hire. WAC 388-112-0076	Not required	Not required	Required per WAC 388-112-0110	Not required during application process	Not required
(3) Adult family home applicant	Seeking a license to operate an adult family home and is not exempt under (1) or (2) of this table. WAC 388-112-0002	Required. Five hours per WAC 388-112-0040 (1)(a)	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Not required during application process	Required per WAC 388-112-0106
(4) Adult family home resident manager	Employed or designated by the provider to manage an adult family home and is not exempt under (1) or (2) of this table. WAC 388-112-0002.	Required. Five hours per WAC 388-112-0040 (1)(a)	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Required. Twelve hours per WAC 388-112-0205	Required per WAC 388-112-0106

Note: First aid and CPR, which are required under WAC 388-112-0260 are not listed in tables above.

NEW SECTION

**WAC 388-112-0004 What action(s) may the department take for provider noncompliance with the requirements of this chapter?** If a provider employs an individual who has not satisfied the training or certification requirements described in this chapter or if a provider fails to comply with any other requirements under this chapter the department is authorized to take one or more of the enforcement actions under:

- (1) (~~WAC 388-78A-3170~~) RCW 18.20.190, for assisted living facility providers; or
- (2) WAC (~~388-76-10960~~) RCW 70.128.160, for adult family home providers.

**Reviser's note:** The unnecessary strikethrough and underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0005 What definitions apply to this chapter? "Applicant",** for the purposes of this chapter, means:

- (1) An individual who is applying for an adult family home license; or
  - (2) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license.
- (~~"Caregiver" means anyone providing hands-on personal care to another person including but not limited to eating, reminding, or supervision of residents, on behalf of an adult family home or boarding home, except volunteers who are directly supervised.~~)

**"Care team"** includes the resident and everyone involved in his or her care. The care team can include family,

friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the resident, however, the resident directs the service plan.

**"Certified home care aide"** means a person who has obtained and maintains a home care aide certification through the department of health.

**"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed.

**"Competency"** ((means the minimum level of information and skill trainees are required to know and be able to demonstrate)) defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

**"Competency testing"** including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course.

**"DDD"** refers to the division of developmental disabilities.

**"Designee"** means a person in ((a boarding home)) assisted living facility who supervises ((caregivers)) long-term care workers and who is designated by ((a boarding home)) assisted living facility administrator to take the trainings in this chapter required of the ((boarding home)) assisted living facility administrator. A ((boarding home)) assisted living facility administrator may have more than one designee.

**"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care.

**"Direct supervision"** means oversight by a person who has demonstrated competency in the basic training ((and specialty training if required)), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver)) or specialty training (if exempt from basic training requirement).

**"DSHS" or "department"** refers to the department of social and health services.

**"Enhancement"** means additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, on-line materials, and/or additional student activities.

**"Entity representative"** means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

**"Functionally disabled person" or "person who is functionally disabled"** means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer.

Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

**"Guardian"** means an individual as defined in chapter 11.88 RCW.

**"Home"** refers to adult family homes and ((boarding homes)) assisted living facilities.

**"Indirect supervision"** means oversight by a person who has demonstrated competency in the basic training ((and specialty training if required)), or who has been exempted from the basic training requirements, and who is quickly and easily available to the ((caregiver)) long-term care worker, but not necessarily on-site.

**"Learning ((outcomes)) objectives"** ((means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum)) are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

**"Long-term care worker"** includes all persons providing paid, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 CFR Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

**"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is provided to meet resident's care needs because a person is a functionally disabled person as defined in this chapter.

**"Provider"** means any person or entity who is licensed by the department to operate an adult family home or assisted living facility, or certified by the department to provide instruction and support services to meet the needs of persons receiving services under title 71A RCW.

**"Resident"** means a person residing and receiving long-term care services at ~~((a boarding home))~~ an assisted living facility or adult family home. As applicable, the term resident also means the resident's legal guardian or other surrogate decision maker.

**"Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

**"Routine interaction"** means contact with residents that happens regularly.

**"Training entity"** means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0010 When do the training requirements go into effect?** (1) The long-term care training requirements described in this chapter went into effect January 7, 2012.

(2) The long-term care worker training requirements ((of this chapter begin September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and apply to:

(1) Adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who are hired or begin to provide hands-on personal care to residents subsequent to September 1, 2002; and

(2) Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 and this chapter. Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 are subject to all applicable requirements of this chapter. However, until September 1, 2002, nothing in this chapter affects the current training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130)) that were in effect on or before January 6, 2012 apply to those individuals who:

(a) Were hired on or before January 6, 2012; and

(b) Completed basic training within the required time-frames.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0015 ((What is orientation)) What are the two types of orientation training and who must complete them?** (1) Individuals who are exempt from certifica-

tion described in RCW 18.88B.041 or volunteers are required to complete long-term care orientation training which provides basic introductory information appropriate to the residential care setting and population served. The department does not approve this specific orientation program, materials, or trainers. No test is required for this orientation.

(2) For individuals required to complete long-term care worker training who do not meet the criteria under subsection (1) above, orientation ((provides basic introductory information appropriate to the residential care setting and population served)) is a training of two hours regarding the long-term care worker's role and the applicable terms of employment.

(a) The department ((does not)) must approve ((specific)) this long-term care worker orientation ((programs, materials, or trainers for homes)) curricula and instructors.

(b) There is no test ((is required)) for this orientation.

## **NEW SECTION**

**WAC 388-112-0016 What content must be included in orientation?** (1) For those individuals identified in WAC 388-112-0015(1) who must compete long-term care worker orientation training:

(a) Long-term care services orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:

- (i) The care setting;
- (ii) The characteristics and special needs of the population served;
- (iii) Fire and life safety, including:
  - (A) Emergency communication (including phone system if one exists);
  - (B) Evacuation planning (including fire alarms and fire extinguishers where they exist);
  - (C) Ways to handle resident injuries and falls or other accidents;
  - (D) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and
  - (E) The location of home policies and procedures.
- (iv) Communication skills and information, including:
  - (A) Methods for supporting effective communication among the resident/guardian, staff, and family members;
  - (B) Use of verbal and nonverbal communication;
  - (C) Review of written communications and/or documentation required for the job, including the resident's service plan;
  - (D) Expectations about communication with other home staff; and
  - (E) Whom to contact about problems and concerns.
- (v) Universal precautions and infection control, including:
  - (A) Proper hand washing techniques;
  - (B) Protection from exposure to blood and other body fluids;
  - (C) Appropriate disposal of contaminated/hazardous articles;

(D) Reporting exposure to contaminated articles, blood, or other body fluids; and

(E) What staff should do if they are ill.

(vi) Resident rights, including:

(A) The resident's right to confidentiality of information about the resident;

(B) The resident's right to participate in making decisions about the resident's care, and to refuse care;

(C) Staff's duty to protect and promote the rights of each resident, and assist the resident to exercise his or her rights;

(D) How and to whom staff should report any concerns they may have about a resident's decision concerning the resident's care;

(E) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;

(F) Advocates that are available to help residents (LTC ombudsmen, organizations); and

(G) Complaint lines, hot lines, and resident grievance procedures.

(vii) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

(2) For long-term care worker orientation required of those individuals identified in WAC 388-112-0015(2):

(a) Long-term care worker orientation is a two hour training that must include introductory information in the following areas:

(i) The care setting and the characteristics and special needs of the population served;

(ii) Basic job responsibilities and performance expectations;

(iii) The care plan, including what it is and how to use it;

(iv) The care team;

(v) Process, policies, and procedures for observation, documentation and reporting;

(vi) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;

(vii) Mandatory reporter law and worker responsibilities; and

(viii) Communication methods and techniques that can be used while working with a resident or guardian and other care team members.

One hour of completed classroom instruction or other form of training (such as a video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

#### NEW SECTION

##### **WAC 388-112-0018 What is safety training? (1)**

Safety is part of the long-term care worker training requirements. It is a three hour training that meets the requirements of WAC 388-112-0019 and includes basic safety precautions, emergency procedures, and infection control.

(2) The department must approve safety training curricula and instructors.

(3) There is no test for safety training.

#### NEW SECTION

**WAC 388-112-0019 What content must be included in safety training?** Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

(a) Proper body mechanics;

(b) Fall prevention;

(c) Fire safety;

(d) In home hazards;

(e) Long term care worker safety; and

(f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

(a) Proper hand washing;

(b) When to wear gloves and how to correctly put them on and take them off;

(c) Basic methods to stop the spread of infection;

(d) Protection from exposure to blood and other body fluids;

(e) Appropriate disposal of contaminated/hazardous articles;

(f) Reporting exposure to contaminated articles; and

(g) What to do when the worker or the resident is sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

(a) Evacuation preparedness;

(b) When and where to call for help in an emergency;

(c) What to do when a resident is falling or falls;

(d) Location of any advance directives if available; and

(e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions. In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0035 What documentation is required for orientation and safety training?** The adult family home or assisted living facility must maintain documentation (~~(of completion of)~~) that orientation training and, if required, safety training, have been completed as required by this chapter. The documentation must be issued by ((the home)) a qualified instructor under WAC 388-112-0383, that ((includes)) must include:

(1) The ~~((trainee's))~~ name of the trainee;

(2) ~~((A list of the specific information taught))~~ The title of the training;

(3) The number of hours of the training;

(4) The signature of the ((person overseeing)) instructor providing orientation(, indicating completion of the required information)) and safety training;

~~((4))~~ (5) The trainee's date of ((employment)) hire;

~~((5))~~ (6) The name and identification number of the home or service provider giving the orientation and safety training; and

~~((6))~~ (7) The date(s) of orientation and safety training for the required, approved training described in WAC 388-112-0015(2) and WAC 388-112-0018.

(8) The documentation required under this section must be kept in a manner consistent with WAC 388-76-10198 (for adult family homes) and WAC 388-78A-2450 (for assisted living facilities).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0040 Who ~~(is required to)~~ must complete orientation and safety training, and by when ~~((must it be completed))~~? ~~((Adult family home))~~**

(1) ~~((All paid or volunteer staff in adult family homes who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate adult family home staff.~~

**Boarding home**

(2) ~~Boarding home administrators (or their designees), caregivers, and all paid or volunteer staff who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate staff))~~ The following individuals must complete long-term care training orientation requirements:

(a) Adult family homes - All volunteer staff and all long term care workers who are exempt from certification under RCW 18.88B.041 must complete orientation before having routine interaction with residents. Orientation must be provided by staff familiar with the adult family home building and operations.

(b) Assisted living facilities - Assisted living facility administrators (or their designees) and all long term care workers who are exempt from certification under RCW 18.88B.041, and volunteer staff must complete orientation before having routine interaction with residents. Orientation must be provided by staff familiar with assisted living facility building and operations.

(2) The following individuals must complete long-term care worker orientation and safety training requirements:

(a) All long-term care workers who are not exempt from certification described in RCW 18.88B.041 hired on or after January 7, 2012 must complete two hours of orientation and three hours of safety training before providing care to residents. This orientation and safety training must be provided by qualified instructors as described in WAC 388-112-0383.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0045 What is basic training?** (1) Basic training for individuals required to complete long-term care worker training is a training of seventy hours which includes ~~((the))~~:

(a) The core ~~((knowledge))~~ competencies and skills that ~~((caregivers))~~ long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills;

(c) Population specific competencies.

(2) DSHS must approve basic training curricula.

(3) Effective July 1, 2012, no more than twelve of the seventy hours may be applied for on-the-job training;

(4) The DSHS developed revised fundamentals of care-giving (RFOC) learner's guide may be used to teach core basic training but it must include enhancements which must be approved by the department. Examples of enhancements include:

(a) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly.

(ii) Resident centered communication and problem solving associated with performing the skill.

(iii) The different levels of care required for each skill (independent, supervision, limited, extensive, total).

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common resident challenges associated with a skill.

(vi) Disease specific concerns or challenges associated with a skill. In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-112-0325.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training.

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care.

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials and/or activities that:

(i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses.

(ii) Are identical to, or a direct replacement of, those already included in RFOC.

(iii) Fail to reinforce Washington state laws associated with resident rights and resident directed care.

(iv) Long-term care workers are not paid to provide.

(v) Are written above a high school reading level.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(6) The long-term care worker must be able to ask the instructor questions during the training.

(7) There is no challenge test for basic training.

NEW SECTION

**WAC 388-112-0053 What topics must be taught in the core competencies of basic training for long-term care workers?** Basic training for long-term care workers must

include all of the competencies described in WAC 388-112-0055 and must cover the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Resident rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (6) Resident directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0055 What ((~~knowledge and skills must be taught in~~)) are the core competencies and learning objectives for long-term care worker basic training?**

~~((+)) The ((basic training knowledge and skills must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:~~

~~(a) Understanding and using effective interpersonal and problem solving skills with the resident, family members, and other care team members;~~

~~(b) Taking appropriate action to promote and protect resident rights, dignity, and independence;~~

~~(c) Taking appropriate action to promote and protect the health and safety of the resident and the caregiver;~~

~~(d) Correctly performing required personal care tasks while incorporating resident preferences, maintaining the resident's privacy and dignity, and creating opportunities that encourage resident independence;~~

~~(e) Adhering to basic job standards and expectations.~~

~~(2) The basic training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration)) core competencies describe the behavior and skills that a long-term care worker must exhibit when working with residents. Learning objectives are associated with each competency.~~

~~(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:~~

~~(a) Recognize how verbal and non-verbal cues impact communication with the resident and care team;~~

~~(b) Engage and respect the resident through verbal and non-verbal communication;~~

~~(c) Listen attentively and determine that the resident understands what has been communicated;~~

~~(d) Recognize and acknowledge residents' communication including indicators of pain, confusion, or misunderstanding;~~

~~(e) Utilize communication strategies to deal with difficult situations; and~~

~~(f) Recognize common barriers to effective communication and identify how to eliminate them.~~

~~(2) Regarding long-term care worker self-care:~~

~~(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;~~

~~(b) Recognize common barriers to self-care and ways to overcome them; and~~

~~(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.~~

~~(3) Regarding the competency of effective problem solving, use effective problem solving skills:~~

~~(a) Explain why it is necessary to understand and utilize a problem solving method;~~

~~(b) Implement a problem solving process/method; and~~

~~(c) Identify obstacles to effective problem solving and ways to overcome them.~~

~~(4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:~~

~~(a) Protect a resident's confidentiality including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;~~

~~(b) Promote dignity, privacy, encourage and support a resident's maximum independence when providing care;~~

~~(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;~~

~~(d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.~~

~~(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:~~

~~(a) Describe long-term care workers' responsibilities as a mandatory reporter as described in RCW 74.34.020 through 74.34.053; and~~

~~(b) Identify common symptoms of abuse, abandonment, neglect, and financial exploitation.~~

~~(6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding his or her care:~~

~~(a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;~~

~~(b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;~~

~~(c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and~~

~~(d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.~~

~~(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care;~~

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency on fall prevention:

(a) Identify fall risk factors and take action to reduce fall risks for a resident; and

(b) Take proper steps to assist a resident who is falling or has fallen.

(10) Regarding the competency of skin and body care, use of personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a resident's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what action to take if a resident appears to be developing or develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a resident's baseline functioning level using information provided in the service plan and explain why it is important to know a resident's baseline;

(c) Identify changes in a resident's physical, mental, and emotional state through observation;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created, used, and modified;

(g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112-0195, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping a resident walk;

(ii) Transferring a resident from a bed to a wheelchair;

(iii) Turning and repositioning a resident in bed;

(iv) Providing oral care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting a resident with a weak arm to dress;

(xi) Putting knee-high elastic stockings on a resident;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting a resident to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incor-

porating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete a DSHS-approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when and to whom to report when a resident refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what BB pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for residents and long-term care workers.

Long-term care workers who complete a DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a resident and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

## NEW SECTION

### **WAC 388-112-0062 What is on-the-job training?** (1)

Effective July 1, 2012, on-the-job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a resident versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as defined in WAC 388-112-0380 who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to residents; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on-the-job training may count for up to twelve hours toward the completion of basic training requirements.

(5) The training program shall offer department approved on-the-job training as part of the seventy hour training.

#### NEW SECTION

**WAC 388-112-0066 What is the population specific component of basic training?** (1) Population specific basic training is training on topics that are unique to the care needs of the population that the home or provider is serving. Topics can include but are not limited to:

- (a) Dementia;
- (b) Mental health;
- (c) Developmental disabilities;
- (d) Young adults with physical disabilities; and
- (e) Aging and older adults.

(2) Specialty training per WAC 388-112-0110 may be used to meet the population specific component of basic training if completed within one hundred and twenty days of date of hire.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0070 What documentation is required ~~((for successful))~~ to show completion of basic training, including core competencies and population specific competencies?** (1) Long-term care worker basic training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
- (b) The name of the training;
- (c) The number of hours of the training;
- (d) The date(s) of training;
- (e) The name of the home or training entity giving the training;
- ~~((f))~~ (f) The instructor's name and signature; and
- ~~((g))~~ (g) The name and the identification number of the instructor for core competencies, and the home or training entity giving the training; and
- (h) The ~~((date(s)))~~ completion date of training.

(2) The trainee must be given an original certificate(s) for proof of completion of the training and retain for their records. ~~((A home))~~ The provider, and if applicable, the training entity must keep a copy of the certificate ~~((on file))~~ as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for assisted living facilities).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0075 Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076? Unless exempt under WAC 388-112-0076 the following individuals must complete basic training requirements:**

#### **Adult family homes**

(1) Adult family home ~~((providers (including entity representatives as defined under chapter 388-76 WAC)))~~ applicants must complete basic training ~~((and demonstrate competency))~~ and become certified before ~~((operating an))~~ the adult family home is licensed.

(2) Adult family home entity representatives and resident managers ~~((must complete basic training and demonstrate competency))~~ before ~~((providing services in an))~~ assuming the duties of the position in the adult family home.

(3) ~~((Caregivers))~~ Long-term care workers in adult family homes ~~((must complete basic training))~~ within one hundred twenty days of ~~((when they begin providing hands on personal care or within one hundred twenty days of September 1, 2002, whichever is later))~~ date of hire. Until ~~((competency in the))~~ basic training has been ~~((demonstrated, caregivers))~~ completed, long-term care workers may not provide ~~((hands on))~~ personal care without ~~((indirect))~~ direct supervision.

#### **~~((Boarding homes))~~ Assisted living facilities**

(4) ~~((Boarding home))~~ Assisted living facility administrators (or their designees), except administrators with a current nursing home administrator license, ~~((must complete basic training and demonstrate competency))~~ within one hundred twenty days of ~~((employment or within one hundred twenty days of September 1, 2002, whichever is later))~~ date of hire.

(5) ~~((Caregivers must complete basic training))~~ Long-term care workers within one hundred twenty days of ~~((when they begin providing hands on personal care or within one hundred twenty days of September 1, 2002, whichever is later))~~ their date of hire. Until ~~((competency in))~~ completion of the basic training ~~((has been demonstrated, caregivers))~~, long-term care workers may not provide ~~((hands on))~~ personal care without direct supervision.

(6) For certification requirements for individuals in subsections (1) through (5) refer to WAC 388-112-0106.

#### NEW SECTION

**WAC 388-112-0076 Which long-term care workers are exempt from the basic training requirement?** The following long-term care workers are exempt from the basic training requirement:

(1) An applicant for an adult family home license on or before January 6, 2012 who met the basic training requirements in effect at the time of application.

(2) A person already employed as a long-term care worker on January 6, 2012, who completed the basic training requirements in effect on the date of his or her hire;

~~((2))~~ (3) A person employed as a long-term care worker on January 6, 2012, who completes within one hundred

twenty days of hire, the basic training requirements in effect on the date of his or her hire;

~~((3))~~ (4) A person previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012;

~~((4))~~ (5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

~~((5))~~ (6) Nursing assistants-certified under chapter 18.88A RCW;

~~((6))~~ (7) Certified counselors under chapter 18.19 RCW;

~~((7))~~ (8) Speech language pathologists or audiologists under chapter 18.35 RCW;

~~((8))~~ (9) Occupational therapists under chapter 18.59 RCW;

~~((9))~~ (10) Physical therapists under chapter 18.74 RCW;

~~((10))~~ (11) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35; and

~~((11))~~ (12) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.

**Reviser's note:** The unnecessary strikethrough and underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-112-0078 What curriculum may be used in the population specific component of the basic training?** Homes or providers may use the following DSHS-developed or approved curriculum to meet all or some of the population specific component of basic training depending on the needs of the population served:

- (1) Dementia specialty training;
- (2) Mental health specialty training; and
- (3) Developmental disabilities specialty training.

#### NEW SECTION

**WAC 388-112-0079 What are the requirements for using basic training to meet the specialty training requirements?** When basic training is used to meet the specialty training requirements:

(1) It must include the department developed competencies and learning objectives as described in WAC 388-112-0122, 388-112-0132, or 388-112-0142. Homes or providers may enhance the specialty training component by adding additional competencies, learning objectives, content, or activities. If the department approves the enhancements and an increased number of training hours, the worker's training hours will apply to the seventy hour training requirement.

(2) Long-term care workers must pass a department competency test described in WAC 388-112-0300 to meet the applicable licensing requirements for adult family homes and assisted living facilities for all specialty training.

#### NEW SECTION

**WAC 388-112-0081 What topics may the training on young adults with physical disabilities include?** The training on young adults with physical disabilities may include all of the competencies and learning objectives described in WAC 388-112-0083 for the following topics:

- (1) Introduction to physical disabilities;
- (2) Common physical disabilities and ability limitations;
- (3) Supporting residents living with chronic conditions;
- (4) Independent living and resident-directed care; and
- (5) Social connections and sexual needs of adults living with disabilities.

#### NEW SECTION

**WAC 388-112-0083 What are the competencies and learning objectives for the training on young adults with physical disabilities?** The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on young adults with physical disabilities. Learning objectives are associated with each competency.

(1) Regarding the competency on young adults with physical disabilities, working effectively with young adults with physical disabilities based upon a basic understanding of disability:

(a) Identify basic information regarding physical disabilities, injuries, and illnesses that are more common in young adults;

(b) Describe the impact of changing and fluctuating abilities;

(c) Identify stereotypes, biases, and misconceptions regarding the perception of young adults with physical disabilities;

(d) Describe how biases, stereotypes, and misconceptions can influence care to young adults with physical disabilities;

(e) Identify and explain the Americans with Disabilities Act and rights for adults with physical disabilities; and

(f) Describe the value of personalizing care and support to the specific resident with a disability.

(2) Regarding the competency on common physical disabilities and ability limitations, providing individualized care based upon a basic understanding of common physical disabilities and their impact on functioning:

(a) Describe common physical disabilities, including paraplegia and quadriplegia, diabetes, multiple sclerosis, and pulmonary disease.

(b) Describe the characteristics and functional limitations of residents with these specific disabilities.

(3) Regarding the competency on supporting residents living with chronic conditions, providing appropriate care by recognizing chronic secondary conditions that impact functioning:

(a) Identify how common chronic medical conditions affect physical disability;

(b) Describe how chronic medical conditions influence and impact care for a young resident with a physical disability;

(c) Describe how to support a resident with a physical disability and multiple chronic conditions; and

(d) Describe how to support the resident's dignity while providing personal care.

(4) Regarding the competency on independent living and resident-directed care, supporting independent living and self-determination for the resident living with a disability:

(a) Define the independent living philosophy and describe what it might look like;

(b) Describe barriers to independent living, including accessibility and attitudes;

(c) Describe ways to support independent living and self-determination with the resident living with a disability;

(d) Describe resident-directed support;

(e) Identify ways to promote resident-directed support; and

(f) Identify resources that promote independence and self-determination for a resident living with a disability.

(5) Regarding the competency of social connections and sexual needs of young adults living with a physical disability, providing optimum support to a resident living with a disability in his or her expression of social and sexual needs:

(a) Describe and explain the importance of full, appropriate, and equal participation of resident's living with a physical disability;

(b) Identify ways to support social connections and activities;

(c) Describe and explain the importance of honoring the resident as a sexual being with diverse sexual needs, desires, and orientation; and

(d) Identify ways to support expression of sexual needs in a respectful, professional, and confidential manner.

#### NEW SECTION

**WAC 388-112-0088 What topics may the training on aging and older adults include?** Training on aging and older adults may include all of the competencies and learning objectives described in WAC 388-112-0091 for the following core knowledge and skills:

(1) Introduction to aging;

(2) Age-associated physical changes;

(3) Cultural impacts on aging;

(4) Ageism and supporting resident dignity;

(5) Supporting residents living with a chronic condition;

(6) Dealing with death, grief, and loss; and

(7) Supporting health and wellness.

#### NEW SECTION

**WAC 388-112-0091 What are the competencies and learning objectives for training on aging and older adults?** The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on aging and older adults. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to aging, draw upon a basic understanding of the aging process and demonstrate awareness of the unique needs of older adults:

(a) Describe basic information on the aging process, including the difference between age-related changes and a disease process;

(b) List typical changes that occur with aging;

(c) Identify common stereotypes, biases, myths, and misconceptions regarding aging, ageism, and older adults;

(d) Describe how ageism, biases, myths, and misconceptions can influence care to older residents;

(e) Describe how aging affects the resident's needs and behaviors; and

(f) Describe the value of adapting caregiving to the age-related concerns of the resident.

(2) Regarding the competency on age-associated physical changes, provide individualized care by understanding physical changes that are experienced in aging:

(a) Identify common physical changes experienced in the aging process;

(b) Describe common sensory changes that occur in aging and their impact on an older adult's activities;

(c) Describe the difference between age-associated physical changes versus a disease process; and

(d) Describe how age-related physical changes can impact functioning and the ability to perform personal care.

(3) Regarding the competency on cultural impacts of aging, provide culturally compassionate care by utilizing a basic understanding of issues related to culture and aging:

(a) Describe how race/ethnicity, poverty, and class influence the aging process;

(b) Describe how race/ethnicity, poverty, and class influence an older adult's help-seeking behavior; and

(c) Describe a culturally sensitive approach to working with older adults that demonstrates shared decision-making and mutual respect.

(4) Regarding the competency on ageism and supporting resident dignity, overcome ageism and support resident dignity by understanding stereotypes and myths regarding aging:

(a) Describe the concept of "ageism" and its possible impact on working with older adults;

(b) Identify his or her perceptions about aging and how these perceptions may contribute to "ageism";

(c) Describe how "ageism" can influence resident dignity; and

(d) Describe strategies for overcoming "ageism" and supporting resident dignity.

(5) Regarding the competency on supporting residents living with chronic medical conditions, provide appropriate care by recognizing how chronic conditions impact functioning:

(a) Describe how chronic medical conditions can influence and impact care for older adults;

(b) Describe strategies for working with an older adult with multiple chronic medical conditions;

(c) Describe proactive ways to support an older adult living with chronic medical conditions; and

(d) Describe how to help support the older adult's dignity while providing care.

(6) Regarding the competency on dealing with death, grief and loss, respond appropriately to a resident experiencing loss:

- (a) Describe common examples of losses encountered in the aging process;
  - (b) Describe common reactions to loss of significant roles;
  - (c) Describe strategies for dealing with loss;
  - (d) Describe the value of promoting social engagement for the older adult;
  - (e) Identify strategies and opportunities for promoting social engagement; and
  - (f) Identify actions and resources that can be used to help an older adult work through feelings of grief and loss.
- (7) Regarding the competency on supporting optimum health and wellness, support the optimum health and wellness of older adults:
- (a) Identify key factors that support resident health and wellness;
  - (b) Identify strategies for promoting resident optimum health while aging;
  - (c) Identify strategies and opportunities to support an older adult to engage in healthy life style choices; and
  - (d) Describe his or her role in promoting optimum health and wellness for older residents.

#### NEW SECTION

**WAC 388-112-0092 What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults?** Homes or providers may develop a curriculum for young adults with physical disabilities and/or for aging and older adults using the learning objectives in WACs 388-112-0083 and WAC 388-112-0091 or any other relevant learning objectives for these populations and submit it for approval by the department.

#### NEW SECTION

**WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when?** Unless exempt under WAC 246-980-070, the following individuals must be certified by the department of health as a home care aide within the required timeframes:

- (1) All long-term care workers, within one hundred and fifty days of hire;
- (2) Adult family home applicants, before licensure;
- (3) Adult family home entity representatives and resident managers, before assuming the duties of the position; and
- (4) Assisted living facility administrators or their designees within one hundred and fifty days of hire.

#### NEW SECTION

**WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification?** (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity who has provided or verified that a total of seventy-five hours of approved training have occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. When applying to the department of health for home care aide certification, the long-term care worker may only submit a seventy-five hour training certificate that has been issued by the department or the training partnership.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a certificate or transcript issued by an approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same training entity, then an approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education.

(4) The long-term care worker and certified home care aide must retain the original seventy-five hour training certificate and any twelve-hour continuing education training certificates or transcripts for as long as:

- (a) They are employed; and
- (b) Up to three years after termination of employment.

AMENDATORY SECTION (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

**WAC 388-112-0110 What is specialty training and who is required to take specialty training?** (1) Specialty or "special needs" training (~~(, including caregiver specialty training,))~~ provides instruction in caregiving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training curricula for managers and ~~((caregivers, except for adult family home caregiver specialty training))~~ long-term care workers.

(2) Manager specialty training is required for ~~((boarding home))~~ assisted living facility administrators (or designees), adult family home applicants or providers ((and)), resident managers, and entity representatives who are affiliated with homes that serve residents who have one or more of the following special needs: developmental disabilities, dementia, or mental health. The managers described in this section must take one or more of the following specialty trainings:

(a) Developmental disabilities specialty training, ~~((under))~~ described in WAC 388-112-0120 ~~((, is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees.))~~;

(b) Manager dementia specialty training, ((under)) described in WAC 388-112-0125 ~~((;))~~; and

(c) Manager mental health specialty training, ((under)) described in WAC 388-112-0135 ~~((, are the required trainings on those specialties for adult family home providers and res-~~

ident managers, and for boarding home administrators (or designees)).

(3) ~~((Caregiver specialty training for boarding homes))~~ All long-term care workers including those who are exempt from basic training and who work in an assisted living facility or adult family home, serving residents with the special needs described in subsection (2) of this section, must take long-term care worker specialty training. The long-term care worker specialty training applies to the type of residents served by the home as follows:

(a) Developmental disabilities specialty training, ~~((under))~~ described in WAC 388-112-0120~~((; is the required training on that specialty for boarding home caregivers))~~.

(b) ~~((Caregiver))~~ Long-term care worker dementia specialty training, ~~((under))~~ described in WAC 388-112-0130~~((; and ((caregiver))~~

~~((c))~~ Long-term care worker mental health specialty training, ~~((under))~~ described in WAC 388-112-0140~~((; are the required trainings on those specialties for boarding home caregivers))~~.

(4) ~~((Caregiver specialty training for adult family homes: The provider or resident manager who has successfully completed the manager specialty training, or a person knowledgeable about the specialty area, trains adult family home caregivers in the specialty needs of the individual residents in the adult family home, and there is no required curriculum))~~ Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred and twenty days of date of hire.

(5) For long term care workers who have completed the seventy-five hour training and do not have a specialty training certificate which indicates completion and competency testing, the long term care worker must complete specialty training when employed by the adult family home or assisted living facility that serves residents with special needs.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0115 What specialty training~~((including caregiver specialty training,))~~ is required if a resident has more than one special need?** If ~~((an individual))~~ a resident has needs in more than one of the special needs areas, the adult family home or assisted living facility must determine which of the specialty trainings will most appropriately address the overall needs of the ~~((person))~~ resident and ensure that the appropriate specialty training ~~((that addresses the overall needs))~~ is completed as required. If additional training beyond the specialty training is needed to meet all of the resident's needs, the adult family home or assisted living facility must ensure that additional training is completed.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0120 What ~~((knowledge and skills))~~ topics must ~~((manager and caregiver))~~ developmental disabilities specialty trainings include? (1) ~~((Manager and caregiver developmental disabilities specialty trainings))~~ Developmental disabilities specialty training must include all**

of the ~~((learning outcomes and competencies published by DSHS))~~ competencies and learning objectives described in WAC 388-112-0122 for the following ~~((core knowledge and skills))~~ topics:

- (a) Overview of developmental disabilities;
- (b) Values of service delivery;
- (c) Effective communication;
- (d) Introduction to interactive planning;
- (e) Understanding behavior;
- (f) Crisis prevention and intervention; and
- (g) Overview of legal issues and ~~((individual))~~ resident rights.

(2) For adult family homes, the division of developmental disabilities (DDD) will provide in-home technical assistance to the adult family home upon admission of the first resident eligible for services from DDD and, thereafter, as determined necessary by DSHS.

~~((3) The manager and caregiver developmental disabilities specialty training learning outcomes and competencies may be obtained from the DSHS division of developmental disabilities.)~~

#### NEW SECTION

**WAC 388-112-0122 What are the competencies and learning objectives for the long-term care worker developmental disability specialty training?** The developmental disability specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an overview of developmental disabilities, drawing upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of residents with developmental disabilities:

- (a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;
- (b) Identify common myths and misconceptions about developmental disabilities;
- (c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and
- (d) Differentiate between developmental disabilities and mental illness.

(2) Regarding the competency on values of service delivery, promote and support a resident's self-determination:

- (a) Identify the principle of normalization and its significance to the work of long-term care workers;
- (b) Explain how understanding each resident's needs leads to better services and supports, which lead to better outcomes for the resident;
- (c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;
- (d) Describe the principle of self-determination; and
- (e) Identify positive outcomes for residents with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or resident's history, experience, and cultural beliefs:

- (a) List the key elements of effective communication;
- (b) Describe the impact communication has on the lives of residents with developmental disabilities;
- (c) Explain the impact a long-term care worker's behavior can have on eliciting communication;
- (d) Explain the impact of a resident's physical environment on their ability to communicate;
- (e) Describe methods of communication, other than verbal, that long-term care workers might use when supporting residents with developmental disabilities; and
- (f) List tips for communication with residents with developmental disabilities.

(4) Regarding the competency on interactive planning, using person-centered and interactive planning when working with residents with developmental disabilities:

- (a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;
- (b) Identify key elements involved in interactive planning;
- (c) Identify ways to include people with developmental disabilities and their families in the planning process; and
- (d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.

(5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:

- (a) Identify the essential components of the concept of positive behavioral supports;
- (b) Define the "ABCs" and describe how to use that process to discover the function of behavior;
- (c) Explain why it is critical to understand the function of behavior before developing a support plan;
- (d) Define reinforcement and identify ways to utilize it as a tool to increase a resident's ability to be successful;
- (e) Identify the problems with using punishment to manage behavior;
- (f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;
- (g) Identify factors that can positively and negatively influence the behavior of residents with developmental disabilities; and
- (h) List steps to be taken when crisis or danger to people is immediate.

(6) Regarding the competency on crisis prevention, support a resident experiencing a crisis and get assistance when needed:

- (a) Identify behaviors in people with developmental disabilities that might constitute "normal stress";
- (b) Define "crisis";
- (c) Differentiate the behaviors a resident who is in crisis exhibits from mental illness;
- (d) Identify the principles of crisis prevention and intervention;

(e) Identify what types of situations require outside assistance and at what point it becomes necessary; and

(f) Name several ways to provide support to a resident experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and resident rights of residents with developmental disabilities:

- (a) Explain how the rights of residents with disabilities compare to those of the general population;
- (b) List the rights of residents living in adult family homes and assisted living facilities and the laws that support those rights;
- (c) Describe how long-term care workers can help residents to exercise their rights;
- (d) List ways a caregiver or long-term care worker must safeguard each resident's confidentiality;
- (e) Describe the three types of guardianship an resident with developmental disabilities might be subject to and why;
- (f) List less restrictive alternatives to guardianship;
- (g) Describe the responsibilities, powers, and limitations of a guardian; and
- (h) Describe the relationship between long-term care workers and guardians/families.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0125 What knowledge and skills must manager dementia specialty training include?** (1) Manager dementia specialty training must include all the learning ~~((outcomes))~~ objectives and competencies published by ~~((DSHS))~~ the department for the following core knowledge and skills:

- (a) Introduction to the dementias;
- (b) Differentiating dementia, depression, and delirium;
- (c) Caregiving goals, values, attitudes and behaviors;
- (d) Caregiving principles and dementia problem solving;
- (e) Effects of cognitive losses on communication;
- (f) Communicating with people who have dementia;
- (g) Sexuality and dementia;
- (h) Rethinking "problem" behaviors;
- (i) Hallucinations and delusions;
- (j) Helping with activities of daily living (ADLs);
- (k) Drugs and dementia;
- (l) Working with families;
- (m) Getting help from others; and
- (n) Self-care for ~~((caregivers))~~ long-term care workers.

(2) The manager dementia specialty training learning outcomes and competencies may be obtained from the ~~((DSHS aging and adult services administration))~~ department.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0130 What ~~((knowledge and skills))~~ topics must ((caregiver)) long-term care worker dementia specialty training include? ~~((+))~~ Long-term care worker dementia specialty training must include all the ((learning outcomes and competencies published by DSHS)) competencies and learning objectives described in WAC**

388-112-0132 for the following (~~core knowledge and skills~~) topics:

- ~~((a))~~ (1) Introduction to the dementias;
  - ~~((b))~~ (2) Dementia, depression, and delirium;
  - ~~((c) Resident-based caregiving;~~
  - ~~((d))~~ (3) Dementia caregiving principles;
  - ~~((e))~~ (4) Communicating with people who have dementia;
  - ~~((f))~~ (5) Sexuality and dementia;
  - ~~((g))~~ (6) Rethinking "problem" behaviors;
  - ~~((h))~~ (7) Hallucinations and delusions;
  - ~~((i))~~ (8) Helping with activities of daily living (ADLs);
- and
- ~~((j))~~ (9) Working with family and friends.

~~((2) The learning outcomes and competencies for caregiver dementia training may be obtained from the DSHS aging and adult services administration.)~~

#### NEW SECTION

**WAC 388-112-0132 What are the competencies and learning objectives for the long-term care worker dementia specialty training?** The dementia specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to dementia, draw upon a basic understanding of dementia and demonstrate awareness of the unique needs of residents with dementia:

- (a) Identify basic information on dementia, including causes and treatments;
- (b) Describe how dementia affects resident needs and behaviors;
- (c) List typical behaviors and symptoms a resident with dementia would most likely experience;
- (d) Describe the differences that might be seen based on the type of dementia a resident has.

(2) Regarding the competency on dementia, depression, and delirium, respond appropriately to residents who have dementia, delirium, and/or depression:

- (a) Identify and differentiate between dementia, depression, and delirium;
- (b) Describe common symptoms of dementia, depression, and delirium and list possible causes;
- (c) Compare and contrast among common symptoms of dementia, depression, and delirium; and
- (d) Identify what symptom changes require immediate professional attention and how to access professional help.

(3) Regarding the competency on dementia caregiving principles, incorporate current best practices when providing dementia care:

- (a) Identify current best practices in dementia caregiving;
- (b) Describe current best practices in caregiving;
- (c) Demonstrate the ability to support the resident's strengths using caregiving techniques to support those strengths; and

(d) Describe how to use cultural and life information to develop and enhance care provided to residents with dementia.

(4) Regarding the competency on communicating with people who have dementia, communicate in a respectful and appropriate manner with residents with dementia:

- (a) Describe common dementia-caused cognitive losses and how those losses can affect communication;
- (b) Identify appropriate and inappropriate nonverbal communication skills and discuss how each impacts a resident's behavior;
- (c) Describe how to effectively initiate and conduct a conversation with a resident who has dementia; and
- (d) Identify communication strategies to work with residents who have dementia.

(5) Regarding the competency on sexuality and dementia, protect a resident or resident's rights when dealing with issues of sexuality and appropriately manage unwanted or inappropriate sexual behavior:

- (a) Identify ways in which dementia affects sexuality and sexual behaviors;
- (b) Identify a resident's rights as they relate to sexuality and sexual behavior and discuss ways to support these rights; and
- (c) Describe how to respond using nonjudgmental caregiving skills to residents' appropriate and inappropriate sexual behaviors.

(6) Regarding the competency on dealing with challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

- (a) Describe how to use a problem-solving method to intervene in challenging behaviors or situations;
- (b) Describe some possible common causes of challenging behaviors, including aggression, catastrophic reactions, wandering, and inappropriate sexual behavior and explore their causes;
- (c) Describe how to implement a problem-solving process when working with a resident who has dementia; and
- (d) Describe how to respond appropriately to a resident who is expressing a challenging behavior.

(7) Regarding the competency on hallucinations and delusions, respond appropriately when a resident is experiencing hallucinations or delusions:

- (a) Define and differentiate between hallucinations and delusions;
- (b) List different types of dementia-related hallucinations; and
- (c) Describe how to appropriately and safely respond to a resident with dementia who is experiencing hallucinations and delusions.

(8) Regarding the competency on activities of daily living, make activities of daily living pleasant and meaningful:

- (a) Identify and describe ways in which to support making activities of daily living pleasant for residents with dementia; and
- (b) Describe strategies that support meaning and utilize an individualized approach when assisting a resident with dementia with activities of daily living.

(9) Regarding the competency on working with family and friends, respond respectfully, appropriately, and with

compassion when interacting with families and friends of residents with dementia:

- (a) Identify common concerns friends and family have when a loved one has dementia;
- (b) Describe ways to be supportive and compassionate in interactions with family and friends of the resident with dementia;
- (c) Identify how to find local resources for family support needs; and
- (d) Describe a method to gather cultural and life history information from a resident and/or representative(s).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0135 What knowledge and skills must manager mental health specialty training include?** ~~((+))~~ Manager mental health specialty training must include all the learning ~~((outcomes))~~ objectives and competencies published by ~~((DSHS))~~ the department for the following core knowledge and skills:

- ~~((a))~~ (1) Introduction to mental illness;
- ~~((b))~~ (2) Culturally compassionate care;
- ~~((c))~~ (3) Respectful communications;
- ~~((d))~~ (4) Understanding mental illness - major mental ~~((disorders))~~ illnesses;
- ~~((e))~~ (5) Understanding mental illness - baseline, decompensation, and relapse planning; responses to hallucinations and delusions;
- ~~((f))~~ (6) Understanding and interventions for behaviors perceived as problems;
- ~~((g))~~ (7) Aggression;
- ~~((h))~~ (8) Suicide;
- ~~((i))~~ (9) Medications;
- ~~((j))~~ (10) Getting help from others; and
- ~~((k))~~ (11) Self-care for ~~((caregivers))~~ long-term care workers.

(2) The manager mental health specialty training learning outcomes and competencies may be obtained from the ~~((DSHS aging and adult services administration))~~ department.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0140 What ~~((knowledge and skills))~~ topics must ~~((caregiver))~~ the long-term care worker mental health specialty training include? (1) ~~((Caregiver))~~ The long-term care worker mental health specialty training must include all of the ~~((learning outcomes and competencies published by DSHS))~~ competencies described in WAC 388-112-0142 for the following ~~((core knowledge and skills))~~ topics:**

- (a) Understanding major mental ~~((disorders))~~ illnesses;
- (b) ~~((Individual))~~ Resident background, experiences and beliefs;
- (c) ~~((Responding to))~~ Respectful communication;
- (d) Creative approaches to challenging behaviors;
- (e) Decompensation~~((:))~~ and relapse~~((:))~~ planning;

- ~~((f))~~ Responding to hallucinations and delusions;
  - ~~((d))~~ Interventions for behaviors perceived as problems;
  - ~~((e))~~ (g) Crisis intervention and dealing with aggression;
- and

- ~~((f))~~ (h) Suicide prevention.
- ~~((2))~~ The learning outcomes and competencies for caregiver mental health training may be obtained from the DSHS aging and adult services administration.)

#### NEW SECTION

**WAC 388-112-0142 What are the competencies and learning objectives for the long-term care worker mental health specialty training?** The mental health specialty competencies describe the behavior and skills a caregiver or long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on understanding major mental illnesses, draw upon a basic understanding of mental illness and demonstrate awareness of the unique needs of residents with mental illness:

- (a) Define and describe main symptoms of depression, bipolar schizophrenia, and anxiety disorder, and list treatment options for each;
- (b) Describe causes of mental illness;
- (c) Describe the progression of mental illness;
- (d) Identify common myths and misinformation about mental illness; and
- (e) Define stigma and identify how stigma can impact caregiving.

(2) Regarding the competency on resident background, experiences and beliefs, provide culturally compassionate and individualized care by utilizing a basic understanding of the resident's history, experience, and cultural beliefs:

- (a) Demonstrate a method for gathering cultural, lifestyle, and personal value information from a resident;
- (b) Identify why obtaining cultural information from a resident is important;
- (c) Describe the importance of being sensitive to cultural differences when providing care;
- (d) Differentiate how cultural beliefs and symptoms may be misinterpreted as mental illness; and
- (e) Identify how the long-term care worker's culture might affect caregiving.

(3) Regarding the competency on communication and mental illness, communicate respectfully and appropriately with residents with a mental illness:

- (a) Identify what is considered respectful and disrespectful communication when interacting with a resident with a mental illness;
- (b) Identify what is judgmental communication toward a resident with a mental illness and ways to ensure communication is nonjudgmental;
- (c) Identify examples of verbal and nonverbal communication and describe how each impacts communication; and
- (d) Describe how to effectively initiate and conduct a respectful conversation with a resident who has a mental illness.

(4) Regarding the competency on creative approaches to challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Define and differentiate between inappropriate learned behaviors and symptoms of a mental illness;

(b) Identify possible common causes of challenging behaviors in a resident with a mental illness;

(c) Differentiate how challenging behaviors may be misinterpreted as mental illness; and

(d) Describe intervention strategies that can be used to reduce or prevent challenging behaviors.

(5) Regarding the competency on responding to de-compensation and relapse, respond appropriately when a resident is decompensating to help prevent a relapse:

(a) Define the terms baseline, de-compensation, and relapse;

(b) Identify common causes and symptoms of de-compensation and relapse;

(c) Describe the term "relapse plan" and review an example of a relapse plan; and

(d) Identify how a long-term care worker can support and use the relapse plan.

(6) Regarding the competency on responding to hallucinations and delusions, respond appropriately to a resident experiencing hallucinations or delusions:

(a) Define the terms hallucination and delusion;

(b) Identify common triggers (including stress) of delusions and hallucinations;

(c) Identify and describe appropriate intervention strategies for a resident experiencing a hallucination or delusion; and

(d) Describe how to accurately document a resident's behavioral symptoms, interventions, and outcomes.

(7) Regarding the competency on crisis intervention and dealing with aggression, intervene early when dealing with aggressive behavior to increase emotional stability and ensure safety:

(a) Define the term aggression;

(b) Identify the difference between aggressive behaviors and aggressive feelings;

(c) List de-escalation "do's" and "don'ts" as they relate to working with a resident expressing aggressive behavior;

(d) Describe appropriate de-escalation techniques when working with a resident expressing aggressive behavior; and

(e) Differentiate between nonimmediate and immediate danger and at what point additional assistance may be needed.

(8) Regarding the competency on suicide prevention, respond appropriately to a resident at risk of suicide:

(a) Identify and list signs a resident is possibly suicidal;

(b) Describe how to respond appropriately to a resident experiencing suicidal thoughts, including:

(i) How, where, and when to refer a resident who is experiencing suicidal thoughts and/ or planning; and

(ii) Methods to keep a suicidal resident safe and ensure the safety for others.

(c) Describe strategies to help cope with a resident's suicide.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0145 ((Is)) Who is required to complete competency testing ((required)) for specialty training((, including caregiver specialty training))?** Passing the DSHS competency test, as provided under WAC 388-112-0295, 388-112-0300 and 388-112-0315 is required for successful completion of specialty training for:

(1) All adult family home applicants or providers ((and), resident managers, ((and for)) entity representatives, and long-term care workers; and

(2) All ((boarding home)) assisted living facility administrators (or designees) ((and caregivers, as provided under WAC 388-112-0290 through 388-112-0315. Competency testing is not required for adult family home caregivers)), and long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0150 Is there a challenge test for specialty training((s)) ((including ((caregiver)) the manager and long-term care worker specialty trainings))?** There is a challenge test for ((aH)) each of the specialty trainings((, including caregiver specialty trainings, except the adult family home caregiver training)) except where noted in subsection (2) below.

(1) Individuals may take the DSHS challenge test instead of required specialty training. A person who does not pass a challenge test on the first attempt must attend the class.

(2) A challenge test is not permitted when specialty training is taken to meet the population specifics of basic training per WAC 388-112-0066.

#### NEW SECTION

**WAC 388-112-0152 Is competency testing required for population specific trainings on young adults with physical disabilities, or aging and older adults?** No, there is no competency testing required for the population specific trainings on young adults with physical disabilities, or aging and older adults.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0155 What documentation is required for successful completion of specialty training((, including caregiver specialty training))?** Specialty training((, including caregiver specialty training,)) as applicable, must be documented by a certificate of successful completion of training, issued by the instructor or training entity((s)) that includes:

(1) The ((trainee's)) name of the trainee;

(2) The name of the training;

(3) The number of hours of the training;

(4) The name and identification number of the home or training entity giving the training;

((4)) (5) The instructor's name and signature; and

((5)) (6) The date(s) of training.

~~((6))~~ The trainee must be given an original certificate. The home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for assisted living facilities).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0160 Who is required to complete manager specialty training, and when? Adult family homes**

(1) Adult family home applicants, providers ~~((including))~~, entity representatives ~~((as defined under chapter 388-76 WAC))~~ and resident managers must complete manager specialty training and demonstrate competency before ~~((admitting and serving residents))~~ the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete manager specialty training and demonstrate competency.

**~~((Boarding homes))~~ Assisted living facilities**

(3) If ~~((a boarding home))~~ an assisted living facility serves one or more residents with special needs, the ~~((boarding home))~~ assisted living facility administrator (or designee) must complete manager specialty training and demonstrate competency within one hundred twenty days of ~~((employment or within one hundred twenty days of September 1, 2002, whichever is later))~~ date of hire. ~~((A boarding home))~~ An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ~~((their facility caregivers))~~ the facility's long-term care workers in a ~~((caregiver))~~ specialty.

(4) If a resident develops special needs while living in ~~((a boarding home))~~ an assisted living facility, the ~~((boarding home))~~ assisted living facility administrator (or designee) has one hundred twenty days to complete manager specialty training and demonstrate competency. ~~((A boarding home))~~ An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ~~((their facility caregivers))~~ the facility's long-term care workers in a ~~((caregiver))~~ specialty.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0165 Who is required to complete ~~((caregiver))~~ long-term care worker specialty training, and when? ~~((Adult family homes))~~**

~~((If an adult family home serves one or more residents with special needs, all caregivers must receive training regarding the specialty needs of individual residents in the home. The provider or resident manager knowledgeable about the specialty area may provide this training.))~~

**~~((Boarding homes))~~**

If ~~((a boarding home))~~ an assisted living facility or adult family home serves one or more residents with special needs, ~~((caregivers))~~ long-term care workers in those settings must complete ~~((caregiver))~~ specialty training and demonstrate competency.

(1) If the ~~((caregiver))~~ specialty training is integrated with basic training, ~~((caregivers))~~ long-term care workers must complete the ~~((caregiver))~~ specialty training within one hundred twenty days of ~~((when they begin providing hands-on personal care to a resident having special needs or within one hundred twenty days of September 1, 2002, whichever is later))~~ hire.

(2) ~~((If the caregiver specialty training is not integrated with basic training, caregivers))~~ Long-term care workers who are exempt from basic training must complete the relevant ~~((caregiver))~~ specialty training within ninety days of ~~((completing basic training))~~ hire.

(3) Until competency in the ~~((caregiver))~~ specialty training has been demonstrated, ~~((caregivers))~~ long-term care workers may not provide hands-on personal care to a resident with special needs without direct supervision in an assisted living facility or in an adult family home.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0170 What is nurse delegation core training?** Nurse delegation core training is required before a nursing assistant certified or registered or certified home care aide may be delegated a nursing task. DSHS approves instructors for nurse delegation core training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0195 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training, and when? ~~((Adult family homes))~~**

(1) Before performing any delegated nursing task, long-term care workers in adult family ~~((home staff))~~ homes and assisted living facilities must:

(a) Successfully complete DSHS-designated nurse delegation core training, "Nurse Delegation for Nursing Assistants";

(b) Be a:

(i) Certified home care aide under chapter 18.88B RCW ~~((nursing assistant registered));~~ or

(ii) Nursing assistant certified under chapter 18.88A RCW; ~~((and))~~ or

(iii) If exempt from the home care aide certification under WAC 246-980-070, become a nursing assistant registered and complete the core competencies of basic training, unless the twenty eight hours of revised fundamentals of care or a department approved alternative was already completed.

(iv) If nurse delegation is needed to implement a care plan earlier than home care aide certification can be obtained, become a nursing assistant registered and complete core competencies of basic training.

~~((c) If a nursing assistant registered, successfully complete basic training.~~

**Boarding homes**)

~~(2) Before performing ((any delegated nursing task, boarding home staff)) the task of insulin injections, long-term care workers in adult family homes and assisted living facilities must:~~

~~(a) ((Successfully complete DSHS-designated nurse delegation core training)) Meet the requirements in subsections (1)(a) and (b) of this section; and~~

~~(b) ((Be a nursing assistant registered or certified under chapter 18.88A RCW; and~~

~~(c) If a nursing assistant registered, successfully complete basic training)) Successfully complete DSHS-designated specialized diabetes nurse delegation training.~~

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

**WAC 388-112-0196 What is specialized diabetes nurse delegation training?** Specialized diabetes nurse delegation training is the required training for nursing assistants, certified or registered or certified home care aides, who will be delegated the task of insulin injections. DSHS approves the instructors for specialized diabetes nurse delegation training.

NEW SECTION

**WAC 388-112-0197 Can nurse delegation core and specialized diabetes training occur in the same year as basic training?** Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards the basic training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0200 What is continuing education?** (1) Continuing education is additional caregiving-related training designed to increase and keep current a person's knowledge and skills. DSHS ((does not preapprove)) must approve continuing education ((programs or instructors)) curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic. The exception to this would be:

(a) Blood borne pathogens.

(b) CPR training.

(c) First aid training.

(d) Food handling training.

(e) When the assisted living facility or adult family home can demonstrate a need for retraining.

(2) Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0205 Who is required to complete continuing education training, and how many hours of continuing education are required each year? (1) Adult family homes**

~~((1) Individuals subject to a continuing education requirement)) (a) From January 1, 2012 through June 30, 2012, adult family home providers, entity representatives, resident managers, and long-term care workers whose birth date is within these dates and the required basic training was previously completed must complete ((at least)) ten hours of continuing education ((each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training)). If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012 for any one listed above, regardless of birth date, then the continuing education requirements have been met for 2012.~~

~~((2)) (b) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110.~~

~~(c) If exempt from certification as described in RCW 18.88B.041, all long-term care workers must complete twelve hours of continuing education per calendar year. Continuing education must include one-half hour per year on safe food handling in adult family homes.~~

**(2) Assisted living facilities**

~~(a) From January 1, 2012 through June 30, 2012, assisted living facility administrators (or their designees) and long-term care workers whose birthdate is within these dates and the required basic training was previously completed must complete ten hours of continuing education. If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012, for any one listed above, regardless of birthdate then the continuing education requirements have been met for 2012.~~

~~(b) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110 and 246-12-020(3).~~

~~(c) If exempt from certification as described in RCW 18.88.041, all long-term care workers must complete twelve hours of continuing education per calendar year. An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement.~~

~~(3) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in subsections (1)(a) and (2)(a) of this section or in WAC 388-112-0207 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.~~

~~(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.~~

NEW SECTION

**WAC 388-112-0207 When must a long-term care worker or certified home care aide complete continuing education?** (1) Effective July 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-112-0205 by their birthday.

(2) For long term care workers who are required to be certified as a home care aide, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0210 What kinds of training topics ~~(are required for)~~ may be covered in continuing education?** Continuing education must be on a topic relevant to the care setting ~~(and)~~ care needs of residents, ~~(including)~~ or long-term care worker career development. Topics or courses may include but are not limited to:

(1) Resident rights, such as freedom from abuse, neglect, abandonment and financial exploitation;

(2) Personal care ~~((such as transfers or skin care))~~ services;

(3) Mental illness;

(4) Dementia;

(5) Developmental disabilities;

(6) Depression;

(7) Medication assistance;

(8) Communication skills;

(9) Positive resident behavior support;

(10) Developing or improving resident centered activities;

(11) Dealing with wandering or aggressive resident behaviors;

(12) Medical conditions; ~~((and))~~

(13) ~~((In adult family homes,))~~ Safe food handling, CPR and First aid described in WAC 388-112-0255 and 388-112-0260; and

(14) Nurse delegation core and specialized diabetes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0220 May basic ~~((or modified basic))~~ training be completed a second time and used to meet the continuing education requirement?** Retaking basic ~~((or modified basic))~~ training may not be used to meet the continuing education requirement.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0225 May specialty training be used to meet continuing education requirements?** Manager specialty training and ~~((caregiver))~~ long-term care worker specialty training, except ~~((any specialty training))~~ if completed through a challenge test, may be used to meet continuing education requirements.

~~((1))~~ If one or more specialty trainings are completed in the same year as basic or modified basic training, the specialty training hours may be applied toward the continuing education requirement for up to two calendar years following the year of completion of the basic and specialty trainings.

~~(2)~~ If one or more specialty trainings are completed in a different year than the year when basic or modified basic training was taken, the specialty training hours may be applied toward the continuing education requirement for the calendar year in which the specialty training is taken and the following calendar year) When a specific specialty training is completed as part of basic training the hours cannot be applied to continuing education. Different specialty training taken in subsequent years may be applied as continuing education hours.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0235 May residential care administrator training be used to meet continuing education requirements?** Residential care administrator training under WAC ~~((388-112-0275))~~ 388-112-0270 may be used to meet ~~((ten hours of))~~ the continuing education requirements described in WAC 388-112-0205 during the year it was completed.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0240 What are the documentation requirements for continuing education?** (1) The adult family home or ~~((boarding home))~~ assisted living facility must maintain ~~((documentation of continuing education including))~~ written documentation of continuing education in the form of a certificate or transcript:

(a) The ~~((trainee's))~~ name of the trainee;

(b) The title ~~((or content))~~ of the training as approved by DSHS;

(c) The number of hours of the training;

(d) The DSHS assigned curriculum approval code;

(e) The DSHS approved instructor's name((;)) and signature;

(f) The name of the DSHS approved home or training entity giving the training((; or the name of the video, on-line class, professional journal, or equivalent instruction materials completed)); and

~~((d))~~ The number of hours of training; and)

~~((e))~~ (g) The date(s) of training.

(2) The trainee must be given an original certificate or other documentation of continuing education. The adult family home or assisted living facility must keep a copy of the certificate or transcript on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for assisted living facilities).

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0255 What is first-aid training?** First-aid training is training that meets the guidelines established

by the Occupational Safety and Health Administration (OSHA) and ~~((listed))~~ described at www.osha.gov. Under OSHA guidelines, training must include hands-on skills development through the use of mannequins or trainee partners. Topics include:

- (1) General program elements, including:
  - (a) Responding to a health emergency;
  - (b) Surveying the scene;
  - (c) Basic cardiopulmonary resuscitation (CPR);
  - (d) Basic first aid intervention;
  - (e) Standard precautions;
  - (f) First aid supplies; and
  - (g) Trainee assessments.
- (2) Type of injury training, including:
  - (a) Shock;
  - (b) Bleeding;
  - (c) Poisoning;
  - (d) Burns;
  - (e) Temperature extremes;
  - (f) Musculoskeletal injuries;
  - (g) Bites and stings;
  - (h) Confined spaces; and
  - (i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.
- (3) Site of injury training, including:
  - (a) Head and neck;
  - (b) Eye;
  - (c) Nose;
  - (d) Mouth and teeth;
  - (e) Chest;
  - (f) Abdomen; and
  - (g) Hand, finger and foot.
- (4) Successful completion of first aid training, following the OSHA guidelines, also serves as proof of the CPR training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0260 What are the CPR and first-aid training requirements? (1) Adult family homes**

~~((+))~~ (a) Adult family home applicants, providers, entity representatives, and resident managers must possess a valid CPR and first-aid card or certificate prior to ~~((providing care for residents))~~ obtaining a license, and must maintain valid cards or certificates.

~~((2))~~ (b) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of ~~((employment))~~ date of hire and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for residents.

~~((3))~~ (c) Adult family home ~~((caregivers))~~ long-term care workers must obtain and maintain a valid CPR and first-aid card or certificate:

~~((a))~~ (i) Within thirty days of beginning to provide care for residents, if the provision of care for residents is directly supervised by a fully qualified ~~((caregiver))~~ long-term care

worker who has a valid first-aid and CPR card or certificate; or

~~((b))~~ (ii) Before providing care for residents, if the provision of care for residents is not directly supervised by a fully qualified ~~((caregiver))~~ long-term care worker who has a valid first-aid and CPR card or certificate.

~~((Boarding homes))~~ (2) **Assisted living facilities**

~~((4) Boarding home)~~ (a) Assisted living facility administrators who provide direct care, and ~~((caregivers))~~ long-term care workers must possess a valid CPR and first-aid card or certificate within thirty days of ~~((employment))~~ date of hire, and must maintain valid cards or certificates. Licensed nurses working in ~~((boarding homes))~~ assisted living facility must possess a valid CPR card or certificate within thirty days of ~~((employment))~~ date of hire, and must maintain a valid card or certificate.

AMENDATORY SECTION (Amending WSR 07-01-045, filed 12/14/06, effective 1/14/07)

**WAC 388-112-0270 Who must take the forty-eight hour adult family home residential care administrator training and when?** ~~((Providers licensed prior to December 31, 2006: Before operating more than one adult family home, the provider (including an entity representative as defined under chapter 388-76 WAC) must successfully complete the department approved forty-eight hour residential care administrator training.~~

~~Prospective providers applying for a license after January 1, 2007: Before a license for an adult family home is granted, the prospective provider))~~ All applicants submitting an application for an adult family home license must successfully complete the department approved forty-eight hour residential care administrator training for adult family homes before a license for an adult family home will be issued.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0280 Is competency testing required for adult family home residential care administrator training?** Competency testing is ~~((not))~~ required for adult family home residential care administrator training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0295 What components must competency testing include?** Competency testing must include the following components:

(1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate for the training;

(2) Written evaluation to show level of comprehension and knowledge of the learning ~~((outcomes))~~ objectives for the training; and

(3) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(4) Instructors who conduct competency testing must have experience or training in assessing competencies.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0300 What training must include the DSHS-developed competency test?** ~~((Basic, modified basic, manager specialty, caregiver specialty, and nurse delegation core training must include the DSHS-developed competency test))~~ The following trainings must include the DSHS-developed competency test:

- (1) Manager dementia specialty training;
- (2) Manager mental health specialty training;
- (3) Long-term care worker dementia specialty training;
- (4) Long-term care worker mental health specialty training;
- (5) Developmental disabilities specialty training;
- (6) Forty-eight hour adult family home residential care administrator training;
- (7) Nurse delegation core training; and
- (8) Nurse delegation specialized diabetes training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0315 How many times may a competency test be taken?** (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. ~~((Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.))~~

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0320 What trainings must be taught with a curriculum approved by DSHS?** (1) The following trainings must be taught ~~((using the DSHS))~~ with a curriculum ((or other curriculum)) approved by DSHS before use:

- (a) Basic training (core and population specific training);
  - (b) ((Modified basic)) Orientation described in WAC 388-112-0015(2), safety, on-the-job, and continuing education;
  - (c) Manager mental health, dementia, and developmental disabilities specialty training;
  - (d) ((Caregiver)) Long-term care worker mental health, dementia, and developmental disabilities specialty training ((in boarding homes)); and
  - (e) Any training that integrates basic training with a ((manager or caregiver)) specialty training.
- (2) The residential care administrator training must use a curriculum approved by DSHS.
- (3) The nurse delegation core and diabetes training must use only the DSHS curriculum.

(4) ~~((A curriculum other than the DSHS curriculum must be approved before it is used. An attestation that the curriculum meets all requirements under this chapter will be sufficient for initial approval. Final))~~ Approval will be based on

curriculum review, as described ~~((under))~~ in WAC 388-112-0330.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0325 What ~~((are the minimum components that an alternative curriculum must include in order to be approved))~~ must be submitted to DSHS for curriculum approval?** ~~((In order to be approved, an alternative curriculum must at a minimum include:~~

- ~~(1) All the DSHS-published learning outcomes and competencies for the course;~~
- ~~(2) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;~~
- ~~(3) The recommended sequence and delivery of the material;~~
- ~~(4) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:~~
  - ~~(a) The expected learning outcomes;~~
  - ~~(b) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;~~
  - ~~(c) Practice of skills to increase competency;~~
  - ~~(d) Feedback to the student on knowledge and skills;~~
  - ~~(e) An emphasis on facilitation by the teacher; and~~
  - ~~(f) An integration of knowledge and skills from previous lessons to build skills.~~
- ~~(5) A list of the sources or references, if any, used to develop the curriculum;~~
- ~~(6) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities; and~~

~~(7) A plan for updating material. Substantial changes to a previously approved curriculum must be approved before they are used))~~ DSHS developed curriculum(s) do not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.

**(1) For orientation and/or safety training:**

Effective January 7, 2012, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing where the required introductory topics as listed in WAC 388-112-0016 for orientation and WAC 388-112-0019 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

**(2) For continuing education:**

Effective July 1, 2012, submit a summary that includes the topic, a brief description of what it will cover, and a course outline. Also include the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development. For on line training courses, also submit a description of how the instructor or training will assess that

the students have integrated the information being taught. Department required continuing education training application forms must be submitted at least forty five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval.

**(3) For basic training:**

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. Otherwise, the following must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training. When submitting one or both sections of basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or outline of the curriculum, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112-0055 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teachers guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught, including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(b) In addition, for curricula being submitted for the core competency section of basic training as described in WAC 388-112-0055, the curriculum must include how much time students will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(c) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

**(4) For specialty training:**

For specialty training that is not the DSHS developed curriculum or other department approved curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts. In order to be approved, an alternative curriculum must at a minimum include:

(a) All the DSHS-published learning outcomes and competencies for the course;

(b) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(c) The recommended sequence and delivery of the material;

(d) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(i) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(ii) Practice of skills to increase competency;

(iii) Feedback to the student on knowledge and skills;

(iv) An emphasis on facilitation by the teacher; and

(v) An integration of knowledge and skills from previous lessons to build skills.

(e) A list of the sources or references, if any, used to develop the curriculum;

(f) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities;

(g) A plan for updating material;

(h) Substantial changes to a previous approved curriculum must be approved before they are used.

**AMENDATORY SECTION** (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0330 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), and continuing education?** ~~((1) An alternative curriculum must be submitted to DSHS for approval with:~~

~~(a) Identification of where each DSHS published required learning outcome and competency is located in the alternate curriculum;~~

~~(b) All materials identified in WAC 388-112-0325; and~~

~~(c) A letter from the boarding home administrator or adult family home provider attesting that the training curriculum addresses all of the training competencies identified by DSHS;~~

~~(2) DSHS may approve a curriculum based upon the attestation in (1)(c) above, until it has been reviewed by DSHS;~~

~~(3) If, upon review by DSHS, the curriculum is not approved, the alternative curriculum may not be used until all required revisions have been submitted and approved by DSHS.~~

~~(4))~~ In order to obtain the department's approval of the curriculum for orientation, safety, basic training (core and population specific training), and continuing education:

(1) Submit the required training application forms and any other materials required for specific curriculums to the department.

(2) After review of the ~~((alternative))~~ curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s) ~~((and if disapproved, the reasons for denial;))~~.

~~((5))~~ (3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.

(5) If after working with the department the ~~((alternative curriculum is not approved, a revised curriculum may be resubmitted to DSHS for another review))~~ reasons why the curriculum is not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and disability services administration (ADSA). The assistant secretary's review decision shall be the final decision of DSHS. No other administrative review is available to the submitter.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0335** What are the requirements for ~~((a boarding home))~~ an assisted living facility or adult family home that wishes to conduct orientation, safety, basic, ~~((modified basic, manager specialty, or caregiver))~~ on-the-job training, continuing education, or long-term care worker specialty training? (1) ~~((A boarding home))~~ An assisted living facility provider or adult family home provider wishing to conduct orientation, safety, basic, ~~((modified basic, manager specialty))~~ on-the-job training, continuing education, or ~~((caregiver))~~ long-term care worker specialty training ~~((for boarding home caregivers))~~ may do so if the ~~((home))~~ provider:

(a) Verifies ~~((and))~~, documents using the department's attestation process, keeps on file, and makes available to the department upon request that all instructors meet ~~((each of))~~ the minimum instructor qualifications in WAC 388-112-0370 through 388-112-0395 for the course they plan to teach;

(b) Teaches using a complete DSHS-developed or approved ~~((alternative))~~ curriculum.

(c) Notifies DSHS in writing of the ~~((home's))~~ provider's intent to conduct staff training prior to providing the ~~((home's))~~ provider's first training, and when changing training plans, including:

(i) ~~((Home))~~ The provider's name;

(ii) Name of training(s) the ~~((home))~~ provider will conduct;

(iii) Name of approved curriculum(s) the ~~((home))~~ provider will use;

(iv) Name of lead instructor and instructor's past employment in ~~((boarding homes and))~~ assisted living facility or adult family homes; and

(v) Whether the ~~((home))~~ provider will train only the ~~((home's))~~ provider's staff, or will also train staff from other ~~((homes))~~ providers. If training staff outside the home or corporation, the instructor must become a DSHS-contracted community instructor;

(d) Ensures that DSHS competency tests are administered as required under this chapter;

(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course~~((, including:~~

(i) The trainee's name;

(ii) The name of the training;

(iii) The name of the home giving the training;

(iv) The instructor's name and signature; and

(v) The date(s) of training);

(f) Keeps a copy of ~~((student))~~ long-term care worker certificates on file for six years, and gives the original certificate to the trainee;

(g) Keeps attendance records and testing records of ~~((students))~~ long-term care workers trained and tested on file for six years; and

(h) Reports training data to DSHS ~~((in DSHS identified time frames))~~ when requested by the department.

(2) ~~((An adult family home wishing to conduct caregiver specialty training that is taught by the provider, resident manager, or person knowledgeable about the specialty area, as required under WAC 388-112-0110 subsection (3), must document the specialty training as provided under WAC 388-112-0155))~~ The department may conduct a random audit at any time to review training and instructor qualifications.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0340** ~~((Do homes need))~~ Is department approval required to provide continuing education ~~((for their staff))~~? Homes or entities may provide continuing education for ~~((their staff without))~~ long-term care workers with prior approval of the training curricula ~~((or))~~ and instructors by the department described in WAC 388-112-0335.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0345** When can DSHS prohibit a home from conducting its own training? DSHS may prohibit a home from providing its own basic, ~~((modified basic,))~~ population specific, specialty, ~~((or caregiver specialty))~~ and continuing education training when:

(1) DSHS determines that the training fails to meet the standards under this chapter;

(2) The home fails to notify DSHS of changes in the curriculum content prior to teaching the curriculum;

(3) The home provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(4) The home's instructor does not meet the applicable qualifications ~~((under))~~ described in WAC ~~((388-112-0375))~~ 388-112-0370, 388-112-0380, 388-112-0383, 388-112-0385, 388-112-0390 and ~~((through))~~ 388-112-0395; or

~~((3))~~ (5) The home's instructor has been a licensee, ~~(boarding home)~~ assisted living facility administrator, or adult family home resident manager, as applicable, of any home subject to temporary management or subject to a revocation or summary suspension of the home's license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager; or

~~((4))~~ (6) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, within the previous ~~(twelve)~~ eighteen months.

~~((5))~~ (7) Nothing in this section shall be construed to limit DSHS' authority under chapters 388-76 ~~((or))~~, 388-78A, or 388-101 WAC to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home from conducting its own training programs.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0350 What trainings must be taught by an instructor who meets the applicable minimum qualifications under this chapter?** ~~((4))~~ The following trainings must be taught by an instructor who meets the applicable minimum qualifications as described in WAC 388-112-0380, 388-112-0383, 388-112-0385, 388-112-0390 and 388-112-0395 for that training: Orientation, safety training, basic training ~~(; modified basic training;)~~, young adults with physical disabilities, aging and older adults, manager and long-term care worker mental health, dementia, ~~(and)~~ developmental disability specialty training ~~(; and caregiver specialty training that is not taught by the boarding home administrator (or designee) or adult family home provider or resident manager)~~, adult family home residential care administrator, on-the-job training, continuing education, and nurse delegation core, and specialized diabetes training.

~~((2) Nurse delegation training and residential care administrator training must be taught by an instructor who is approved by DSHS.)~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0355 What are ~~((an instructor's or))~~ the training entity's responsibilities?** The ~~((instructor or))~~ training entity is responsible for:

- (1) Coordinating and teaching classes ~~(;)~~;
- (2) Assuring that the curriculum used is taught as designed ~~(;)~~;
- (3) Selecting qualified guest speakers where applicable ~~(;)~~;
- (4) Establishing a method whereby the long-term care worker can ask the instructor questions;

(5) Administering or overseeing the administration of DSHS competency and challenge tests ~~(;)~~;

~~((5))~~ (6) Maintaining training records including ~~((student))~~ long-term care worker tests, certificates and attendance records for a minimum of six years ~~(;)~~;

~~((6))~~ (7) Reporting training data to DSHS ~~((in DSHS-identified time frames;))~~ when requested by the department; and

~~((7))~~ (8) Issuing or reissuing training certificates to ~~((students))~~ long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0360 Must training entities and their instructors be approved by DSHS?** (1) DSHS-contracted ~~((instructors))~~ training entities:

(a) DSHS must approve ~~((any))~~ and/or contract with a training entity and their instructor(s) ~~((under contract with DSHS))~~ to conduct orientation, safety, basic, ~~((modified basic;))~~ population specific, residential care administrator, manager and long-term care worker specialty, ~~((or))~~ nurse delegation core and specialized diabetes training ~~((classes using the training curricula developed by DSHS)), on-the-job training, and continuing education.~~

(b) DSHS may select ~~((contracted instructors through a purchased services contract procurement pursuant to chapter 236-48 WAC or through other))~~ training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through ~~((a request for qualifications and quotations (RFQQ) or other applicable))~~ the contracting procedure.

(2) Homes conducting their own training ~~((Homes conducting their own training))~~ programs using the training curricula developed by DSHS or ~~((alternative))~~ another curricula approved by DSHS must ensure, through an attestation process, that their instructors meet the minimum qualifications for instructors under this chapter.

(3) ~~((Other instructors))~~

DSHS must approve all other training entities and their instructor(s) not described in subsection (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0365 Can DSHS deny or terminate a contract ~~((with))~~ or rescind approval of an instructor or training entity?** (1) DSHS may ~~((determine not to accept a bid or other offer by))~~ deny a person or organization seeking a contract with or approval by DSHS to conduct orientation, safety, basic, ~~((modified basic;))~~ population specific, residential care administrator, specialty, continuing education, or nurse delegation core or specialized diabetes training ~~((classes using the training curricula developed by DSHS. The protest procedures under chapter 236-48 WAC, as applicable, are a bidder's exclusive administrative remedy)).~~ No administrative remedies are available to dispute DSHS' decision not to ~~((accept an offer that is not governed by chapter 236-48 WAC))~~ contract with or approve of a person or organization, except as may be provided through the contracting process.

(2) DSHS may terminate ~~((any))~~ an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, specialty, continuing education, or nurse delegation core or diabetes training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0370** What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic ~~((and developmental disabilities specialty))~~ training? (1) A guest speaker ~~((s for basic and developmental disabilities specialty training))~~ is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which they have expertise, ~~((under the supervision of the instructor. A guest speaker must have as minimum qualifications, an appropriate))~~ and background and experience that demonstrates that the guest speaker has expertise on the topic he or she will teach.

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must select guest speakers that meet the minimum qualifications ~~((, and))~~;

(b) Maintain documentation of ~~((this))~~ the guest speaker's background and qualifications;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0380** What are the minimum qualifications for ~~((an instructor for basic or modified basic))~~ an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training? An instructor for basic ~~((or modified basic)), population specific, on-the-job training, residential care administrator, nurse delegation core and nurse delegation specialized diabetes training~~ must meet the following minimum qualifications ~~((in addition to the general instructor qualifications in WAC 388-112-0375))~~:

(1) Twenty-one years of age; and

(2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state.

(3) Education and work experience:

(a) Upon initial approval or hire, must ~~((have))~~:

(i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a community based setting or an adult family home, assisted living facility, supported living through DDD, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, ~~((boarding home))~~ assisted living, supported living through DDD ~~((per chapter 388-820 WAC)), or home care setting ~~((, or~~~~

~~((ii))~~ An associate degree in a health field and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting).

~~((2))~~ (4) Teaching experience:

(a) Must have one hundred hours of experience teaching adults in an appropriate setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class ~~((in))~~ on adult education that meets the requirements of WAC 388-112-0400.

~~((3))~~ (5) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;

~~((4))~~ (6) Instructors who will administer tests must have experience or training in assessment and competency testing; and

~~((5))~~ If required under WAC 388-112-0075 or 388-112-0105, instructors must successfully complete basic or modified basic training prior to beginning to train others.)

(7) In addition, an instructor for nurse delegation core and diabetes training must have a current Washington state RN license in good standing without practice restrictions.

#### NEW SECTION

**WAC 388-112-0383** What are the minimum qualifications for an instructor for orientation, safety, and continuing education? An instructor for orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, ~~((hands-on))~~ personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

**Reviser's note:** The unnecessary strikethrough in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0385** What are the minimum qualifications for instructors for manager and ~~((caregiver))~~ long-term care worker mental health specialty training? (1) ~~((Instructors for manager mental health specialty train-~~

~~ing:))~~ The minimum qualifications for instructors for **manager mental health specialty**, in addition to the general qualifications in WAC (~~(388-112-0375))~~ 388-112-0380 (1) and (2) include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education;

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or in college classes, in subjects directly related to mental health, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, and continuing education.)

(ii) If required (~~(under)~~) by WAC 388-112-0160, successful completion of the mental health specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience;

(i) Two hundred hours experience teaching mental health or closely related subjects; and

(ii) Successful completion of an adult education class (~~(or train the trainer as follows)~~):

(A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400(~~(, or a train the trainer class for the curriculum they are teaching:))~~).

~~((B))~~ (iii) For instructors teaching (~~(DSHS-developed)~~) mental health specialty training, successful completion of the DSHS(~~(-developed train the trainer)~~) instructor qualification/demonstration process:

(iv) And has been approved and contracted by the department as a community instructor.

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for (~~(caregiver)~~) long-term care worker mental health specialty training:

(a) (~~(Caregiver)~~) Long-term care worker mental health specialty may be taught by (~~(a boarding home)~~) an assisted living facility administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager mental health specialty training. A qualified instructor under this subsection may teach (~~(caregiver)~~) specialty to (~~(caregivers)~~) long-term care workers employed at other home(s) licensed by the same licensee.

~~((b) Caregiver)~~ (3) Long-term care worker mental health specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager mental health specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0390** What are the minimum qualifications for instructors for manager and (~~(caregiver)~~)

long-term care worker dementia specialty? (1) The minimum qualifications for instructors for manager dementia specialty, in addition to the general qualifications (~~(under)~~) defined in WAC (~~(388-112-0375,))~~ 388-112-0380 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education;

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, or continuing education.)

(ii) If required (~~(under)~~) in WAC 388-112-0160, successful completion of the dementia specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have dementia; and

(d) Teaching experience;

(i) Two hundred hours experience teaching dementia or closely related subjects; and

(ii) Successful completion of an adult education class (~~(or train the trainer as follows)~~):

(A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400(~~(, or a train the trainer class for the curriculum they are teaching:))~~).

~~((B))~~ (iii) For instructors teaching DSHS-developed dementia specialty training, successful completion of the DSHS(~~(-developed train the trainer)~~) instructor qualification/demonstration process:

(iv) And has been approved and contracted by the department as a community instructor.

~~((C))~~ (e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for (~~(caregiver)~~) long-term care worker dementia specialty training:

(a) (~~(Caregiver)~~) Long-term care worker dementia specialty may be taught by (~~(a boarding home)~~) an assisted living facility administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager dementia specialty training. A qualified instructor under this subsection may teach (~~(caregiver)~~) specialty to (~~(caregivers)~~) long-term care workers employed at other home(s) licensed by the same licensee.

(b) (~~(Caregiver)~~) Long-term care worker dementia specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager dementia specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0395** What are the minimum qualifications for instructors for (~~(manager and caregiver)~~)

**manager and long-term care worker developmental disabilities specialty?** (1) The minimum qualifications for instructors for ~~((manager))~~ developmental disabilities specialty, in addition to the general qualifications ~~((under))~~ defined in WAC ~~((388-112-0375))~~ 388-112-0380 (1) and (2), include:

(a) The instructor must be experienced in developmental disabilities caregiving practices and capable of demonstrating competency in the entire course content, including the administration of competency testing;

(b) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full time work experience in the field of developmental disabilities, including two years full time direct work experience with people who have a developmental disability.

~~((b))~~ (c) Successful completion of the eighteen hour developmental disabilities specialty training under WAC 388-112-0120; and

~~((e))~~ (d) Teaching experience:

(i) Two hundred hours of teaching experience; and

(ii) Successful completion of an adult education ~~((or train the trainer))~~ class as follows:

(A) For instructors teaching alternative curricula, a class in adult education that meets the requirements of WAC 388-112-0400 ~~((, or a train the trainer class for the curriculum they are teaching))~~;

(B) For instructors teaching ~~((DSSH-developed))~~ developmental disabilities specialty training, successful completion of the ~~((DSSH-developed train the trainer))~~ DSSH instructor qualification/demonstration process.

(e) Has been approved and contracted by the department as a community instructor.

~~((d))~~ (f) Instructors who will administer tests must have experience in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ developmental disabilities specialty training:

(a) ~~((Caregiver))~~ Developmental disabilities specialty may be taught by ~~((a boarding home))~~ an assisted living facility administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the ~~((manager developmental disabilities specialty training))~~ mental health or manager dementia specialty course, the eighteen hour developmental disabilities specialty training, and has successfully completed the instructor qualification/demonstration process. A qualified instructor under this subsection may teach ~~((caregiver))~~ developmental disabilities specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ~~((Caregiver))~~ Developmental disabilities specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for ~~((manager))~~ developmental disabilities specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0405 What physical resources are required for** ~~((basic, modified basic, specialty, or nurse delegation core))~~ **classroom training and testing?** (1) Classroom ~~((space used for basic, modified basic, specialty, or nurse delegation core classroom training))~~ facilities must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites must provide adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0410 What standard training practices must be maintained for** ~~((basic, modified basic, specialty, or nurse delegation core))~~ **classroom training and testing?** The following training standards must be maintained for ~~((basic, modified basic, specialty or nurse delegation core))~~ classroom training and testing:

(1) Training ~~((, including all breaks,))~~ must not exceed eight hours within one day;

(2) Training provided in short time segments must include an entire unit, skill or concept;

(3) Training must include regular breaks; and

(4) ~~((Students))~~ Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-112-0020	What content must be included in an orientation?
WAC 388-112-0025	Is competency testing required for orientation?
WAC 388-112-0030	Is there a challenge test for orientation?
WAC 388-112-0050	Is there an alternative to the basic training for some health care workers?
WAC 388-112-0060	Is competency testing required for basic training?
WAC 388-112-0065	Is there a challenge test for basic training?
WAC 388-112-0080	What is modified basic training?

- WAC 388-112-0085 What knowledge and skills must be included in modified basic training?
- WAC 388-112-0090 Is competency testing required for modified basic training?
- WAC 388-112-0095 Is there a challenge test for modified basic training?
- WAC 388-112-0100 What documentation is required for successful completion of modified basic training?
- WAC 388-112-0105 Who may take modified basic training instead of the full basic training?
- WAC 388-112-01965 Who is required to complete the specialized diabetes nurse delegation training, and when?
- WAC 388-112-0215 Is competency testing required for continuing education?
- WAC 388-112-0230 May nurse delegation core training or nurse delegation specialized diabetes training be used to meet continuing education requirements?
- WAC 388-112-0245 Who is required to complete continuing education training, and when?
- WAC 388-112-02610 What is HIV/AIDS training?
- WAC 388-112-02615 Is competency testing required for HIV/AIDS training?
- WAC 388-112-02620 Is there a challenge test for HIV/AIDS training?
- WAC 388-112-02625 What documentation is required for completion of HIV/AIDS training?
- WAC 388-112-02630 Who is required to complete HIV/AIDS training, and when?
- WAC 388-112-0375 What are the minimum general qualifications for an instructor teaching a DSHS curriculum or DSHS-approved alternate curriculum as defined under chapter 388-112 WAC?

**WSR 12-17-024**  
**PROPOSED RULES**  
**TACOMA COMMUNITY COLLEGE**

[Filed August 6, 2012, 12:18 p.m.]

Continuance of WSR 12-16-030.  
 Preproposal statement of inquiry was filed as WSR 12-08-017.  
 Title of Rule and Other Identifying Information: Revise chapter 132V-116 WAC, Parking and traffic rules and regulations.  
 Hearing Location(s): Tacoma Community College, Building 12-120, 6501 South 19th Street, Tacoma, WA 98466, on October 22, 2012, at 4:00 p.m.  
 Date of Intended Adoption: October 22, 2012.  
 Submit Written Comments to: Will Howard, Tacoma Community College, 6501 South 19th Street, Tacoma, WA 98466, e-mail [whoward@tacomacc.edu](mailto:whoward@tacomacc.edu), fax (253) 566-5344, by October 8, 2012.  
 Assistance for Persons with Disabilities: Contact Cathie Bitz, by October 15, 2012, [cbitz@tacomacc.edu](mailto:cbitz@tacomacc.edu) or (253) 566-5101.  
 Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continuance of public hearing from October 15 to October 22, 2012.

August 6, 2012  
 Mary A. Chikwinya  
 Vice-President  
 for Student Services

**WSR 12-17-036**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Division of Developmental Disabilities)

[Filed August 7, 2012, 2:02 p.m.]

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 12-11-123.  
 Title of Rule and Other Identifying Information: The department is proposing the amendment of current sections and adoption of new sections in chapter 388-845 WAC.  
 The proposed amendments are WAC 388-845-0005 What are home and community based services (HCBS) waivers?, 388-845-0010 What is the purpose of HCBS waivers?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?, 388-845-0050 How do I request to be enrolled in a waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0070 What determines if I need ICF/MR level of care?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0205 Basic waiver services, 388-845-0210 Basic Plus waiver services, 388-845-0215 CORE waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support

(CIIBS) waiver services, 388-845-0310 Are there limits to the AFH services I can receive?, 388-845-0400 What are adult residential care (ARC) services?, 388-845-0405 Who is a qualified provider of ARC services?, 388-845-0410 Are there limits to the ARC services I can receive?, 388-845-0500 What is behavior management and consultation?, 388-845-0501 What is included in behavior management and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider of behavior management and consultation?, 388-845-0510 Are there limits to the behavior management and consultation I can receive?, 388-845-0750 What are community transition services?, 388-845-0800 What is emergency assistance?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-1100 What are mental health crisis diversion bed services?, 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?, 388-845-1110 What are the limits of mental health crisis diversion bed services?, 388-845-1150 What are mental health stabilization services?, 388-845-1155 Who are qualified providers of mental health stabilization services?, 388-845-1160 Are there limitations to the mental health stabilization services that I can receive?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1610 Where can respite care be provided?, 388-845-1615 Who are qualified providers of respite care?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1900 What are specialized psychiatric services?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2200 What are transportation services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my plan of care or individual support plan effective?, 388-845-3061 Can a change in my plan of care or individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the plan of care or individual support plan?, 388-845-3065 How long is my plan effective?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change?, 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver?, 388-845-3085 What if my needs exceed what can be provided under the CIIBS, CORE or community protection waiver?, 388-845-4000 What are my appeal rights under the waiver?, and 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?

The proposed new sections are WAC 388-845-1607 Can someone who lives with me be my respite provider? and 388-845-3063 Can my individual support plan be effective before the end of the month?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 9, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 9, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 9, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 19, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 388-845 WAC is being amended to comply with federal and state law. Proposed updates include:

- Rename ICF/MR to ICF/ID;
- Rename behavior management and consultation and mental health stabilization;
- Remove duplication of plan of care language;
- Remove obsolete link and rule citations;
- Eliminate skilled nursing services under mental health stabilization services;
- Clarify residential setting to community transition services;
- Clarify when ISP is effective, and
- Clarify intent of respite services.

The changes that are reflected above are required to maintain compliance with the HCBS waiver programs for the division of developmental disabilities that was approved by the Centers for Medicare and Medicaid Services. This request for rule modification is to address obsolete language that is in conflict in all of the approved HCBS waivers, clarify language to ensure that services are implemented consistent with services contained in the approved HCBS waiver program, or to update language that is no longer in compliance with federal and state law. These changes ensure the division is in compliance with the HCBS waiver program and to ensure the division can continue to collect federal financial match for the receipt of services.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 74.08.090.

Statute Being Implemented: RCW 71A.12.030, 74.08.-090.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of social and health services.

Name of Agency Personnel Responsible for Drafting and Implementation: Kris Pederson, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3445; and Enforcement: Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a

small business impact statement is not required as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

July 30, 2012  
Katherine J. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-18 issue of the Register.

**WSR 12-17-040**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed August 8, 2012, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-018.

Title of Rule and Other Identifying Information: Amending WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt to raise the market value threshold for reporting total loss vehicles to the department of licensing.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on September 26, 2012, at 3:00 p.m.

Date of Intended Adoption: September 27, 2012.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98501-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by September 25, 2012.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 25, 2012, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: According to RCW 46.12.600, if, for any year beginning with 2002, the consumer price index (CPI) for all urban consumers, compiled by the Bureau of Labor Statistics, United States Department of Labor, or its successor, for the west region, in the expenditure category "used cars and trucks," shows an increase in the annual average for that year compared to that of the year immediately prior, the department shall by rule, increase the then market value threshold amount by the same percentage as the percentage increase of the annual average, with the increase of the market value threshold amount to be effective on July 1 of the year immediately after the year with the increase of the annual average. The CPI showed an increase this previous year and the market value threshold amount was increased from \$7660 to \$7880. For this reason, WAC 308-56A-460 needs to be changed (and should have been changed effective July 1, 2012) to reflect this increase in the market value threshold amount.

Reasons Supporting Proposal: Compliance with statute.  
Statutory Authority for Adoption: RCW 46.01.110.  
Statute Being Implemented: RCW 46.12.600.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Rebecca Burdick, Highways-Licenses Building, Olympia, Washington, (360) 902-3774; Implementation and Enforcement: Jennifer Dana, Highways-Licenses Building, Olympia, Washington, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 8, 2012

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-034, filed 10/26/11, effective 11/26/11)

**WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt. (1) What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW 46.04.514;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

**(2) How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's on-line reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form (TD 420-074).

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.600 is also required.

(3) **What is the current market value threshold amount?** The current market value threshold amount is seven thousand ~~((six))~~ eight hundred ~~((sixty))~~ eighty dollars.

(4) **How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW 46.12.600 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

(5) **What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW 46.12.600 has been met. The certificate of title will be branded according to WAC 308-56A-530.

(6) **What documentation is required to obtain a certificate of title after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of title:

(a) Application for certificate of title as described in RCW 46.12.530;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

(7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW 46.16A.200, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

(9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

#### WSR 12-17-043

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed August 8, 2012, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-07-024 and 12-07-025.

Title of Rule and Other Identifying Information: WAC 182-550-4900 Disproportionate share hospital (DSH) payments—General provisions and 182-550-5150 Payment method—General assistance-unemployable disproportionate share hospital (GAUDSH); and new WAC 182-550-5300 Payment method—Children's health program disproportionate share hospital (CHPDSH).

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 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 September 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 26, 2012.

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 September 25, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters at TTY/TDD (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 performing the following actions:

1. Removing any references to the general assistance-unemployable (GA-U) program in WAC 182-550-4900 and 182-550-5150 and replacing them with references to the medical care services (MCS) program.

2. Clarifying in WAC 182-550-5150 that only inpatient hospital services are eligible for payment under the MCS program.

3. Establishing a rule for payment to hospitals for providing services to noncitizen children that do not qualify for Title XIX.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1346; Implementation and Enforcement: Mary O'Hare, P.O. Box 45505, Olympia, WA 98504-5500, (360) 725-9820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. HCA has analyzed the proposed new and amended rules and determines they will not have an adverse economic impact on small businesses. The preparation of a comprehensive small business economic impact statement therefore is not required.

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 committee or applied voluntarily.

August 8, 2012  
Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4900 Disproportionate share hospital (DSH) payments—General provisions.** (1) As required by section 1902 (a)(13)(A) of the Social Security Act (42 U.S.C. 1396 (a)(13)(A)) and RCW 74.09.730, the ((department)) medicaid agency makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients with special needs. These adjustments are also known as disproportionate share hospital (DSH) payments.

(2) No hospital has a legal entitlement to any DSH payment. A hospital may receive DSH payments only if:

(a) It satisfies the requirements of 42 U.S.C. 1396r-4;

(b) It satisfies all the requirements of ((department)) agency rules and policies; and

(c) The legislature appropriates sufficient funds.

(3) For purposes of eligibility for DSH payments, the following definitions apply:

(a) "Base year" means the twelve-month medicare cost report year that ended during the calendar year immediately preceding the year in which the state fiscal year (SFY) for which the DSH application is being made begins.

(b) "Case mix index (CMI)" means the average of diagnosis related group (DRG) weights for all of an individual hospital's DRG-paid medicaid claims during the SFY two years prior to the SFY for which the DSH application is being made.

(c) "Charity care" means necessary hospital care rendered to persons unable to pay for the hospital services or unable to pay the deductibles or coinsurance amounts required by a third-party payer. The charity care amount is determined in accordance with the hospital's published charity care policy.

(d) "DSH reporting data file (DRDF)" means the information submitted by hospitals to the ((department)) agency which the ((department)) agency uses to verify medicaid client eligibility and applicable inpatient days.

(e) "Hospital-specific DSH cap" means the maximum amount of DSH payments a hospital may receive from the ((department)) agency during a SFY. If a hospital does not qualify for DSH, the ((department)) agency will not calculate the hospital-specific DSH cap and the hospital will not receive DSH payments.

(f) "Inpatient medicaid days" means inpatient days attributed to clients eligible for Title XIX medicaid programs. Excluded from this count are inpatient days attributed to clients eligible for state administered programs, medicare Part A, Title XXI, the refugee program and the TAKE CHARGE program.

(g) "Low income utilization rate (LIUR)" the sum of two percentages:

(i) The ratio of payments received by the hospital for patient services provided to clients under medicaid (including managed care), plus cash subsidies received by the hospital from state and local governments for patient services, divided by total payments received by the hospital from all patient categories; plus

(ii) The ratio of inpatient charity care charges less inpatient cash subsidies received by the hospital from state and local governments, less contractual allowances and discounts, divided by total charges for inpatient services.

(h) "Medicaid inpatient utilization rate (MIPUR)" is calculated as a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to clients who (for such days) were eligible for medical assistance during the base year (regardless of whether such clients received medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. "Inpatient days" include each day in which a person (including a newborn) is an inpatient in the hospital, whether or not the person is in a specialized ward and whether or not the person remains in the hospital for lack of suitable placement elsewhere.

(i) "Medicare cost report year" means the twelve-month period included in the annual cost report a medicare-certified hospital or institutional provider is required by law to submit to its fiscal intermediary.

(j) "Nonrural hospital" means a hospital that:

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC ((388-550-4650)) 182-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC ~~((388-550-2600))~~ 182-550-2600 (2)(d);

(iii) Is not a small rural hospital as defined in (n) of this subsection; and

(iv) Is located in the state of Washington or in a designated bordering city. For DSH purposes, the ~~((department))~~ agency considers as nonrural any hospital located in a designated bordering city.

(k) "Obstetric services" means routine, nonemergency obstetric services and the delivery of babies.

(l) "Service year" means the one year period used to measure the costs and associated charges for hospital services. The service year may refer to a hospital's fiscal year or medicare cost report year, or to a state fiscal year.

(m) "Statewide disproportionate share hospital (DSH) cap" is the maximum amount per SFY that the state can distribute in DSH payments to all qualifying hospitals during a SFY.

(n) "Small rural hospital" means a hospital that:

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC ~~((388-550-4650))~~ 182-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC ~~((388-550-2600))~~ 182-550-2600 (2)(d);

(iii) Has fewer than seventy-five acute beds;

(iv) Is located in the state of Washington; and

(v) Is located in a city or town with a nonstudent population of no more than seventeen thousand eight hundred six in calendar year 2008, as determined by population data reported by the Washington state office of financial management population of cities, towns and counties used for the allocation of state revenues. This nonstudent population is used for SFY 2010, which begins July 1, 2009. For each subsequent SFY, the nonstudent population is increased by two percent.

(o) "Uninsured patient" is a person without creditable coverage as defined in 45 C.F.R. 146.113. (An "insured patient," for DSH program purposes, is a person with creditable coverage, even if the insurer did not pay the full charges for the service.) To determine whether a service provided to an uninsured patient may be included for DSH application and calculation purposes, the ~~((department))~~ agency considers only services that would have been covered and paid through the ~~((department's))~~ agency's fee-for-service process.

(4) To be considered for a DSH payment for each SFY, a hospital must meet the criteria in this section:

(a) DSH application requirement.

(i) Only a hospital located in the state of Washington or in a designated bordering city is eligible to apply for and receive DSH payments. An institution for mental disease (IMD) owned and operated by the state of Washington is exempt from the DSH application requirement.

(ii) A hospital that meets DSH program criteria is eligible for DSH payments in any SFY only if the ~~((department))~~ agency receives the hospital's DSH application by the deadline posted on the ~~((department's website))~~ agency's web site.

(b) DSH application review and correction period.

(i) This subsection applies only to DSH applications that meet the requirements under (a) of this subsection.

(ii) The ~~((department))~~ agency reviews and may verify any information provided by the hospital on a DSH application. However, each hospital has the responsibility for ensuring its DSH application is complete and accurate.

(iii) If the ~~((department))~~ agency finds that a hospital's application is incomplete or contains incorrect information, the ~~((department))~~ agency will notify the hospital. The hospital must resubmit a new, corrected application. The ~~((department))~~ agency must receive the new DSH application from the hospital by the deadline for corrected DSH applications posted on the ~~((department's website))~~ agency's web site.

(iv) If a hospital finds that its application is incomplete or contains incorrect information, it may choose to submit changes and/or corrections to the DSH application. The ~~((department))~~ agency must receive the corrected, complete, and signed DSH application from the hospital by the deadline for corrected DSH applications posted on the ~~((department's website))~~ agency's web site.

(c) Official DSH application.

(i) The ~~((department))~~ agency considers as official the last signed DSH application submitted by the hospital as of the deadline for corrected DSH applications. A hospital cannot change its official DSH application. Only those hospitals with an official DSH application are eligible for DSH payments.

(ii) If the ~~((department))~~ agency finds that a hospital's official DSH application is incomplete or contains inaccurate information that affects the hospital's LIDSH payment(s), the hospital does not qualify for, will not receive, and cannot retain, LIDSH payment(s). Refer to WAC ~~((388-550-5000))~~ 182-550-5000.

(5) A hospital is a disproportionate share hospital for a specific SFY if the hospital satisfies the medicaid inpatient utilization rate (MIPUR) requirement (discussed in (a) of this subsection), and the obstetric services requirement (discussed in (b) of this subsection).

(a) The hospital must have a MIPUR ~~((greater than))~~ or more; and

(b) Unless one of the exceptions described in (i)(A) or (B) of this subsection applies, the hospital must have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to eligible individuals.

(i) The obstetric services requirement does not apply to a hospital that:

(A) Provides inpatient services predominantly to individuals younger than age eighteen; or

(B) Did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(ii) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(6) To determine a hospital's MIPUR, the ~~((department))~~ agency uses inpatient days as follows:

(a) The total inpatient days on the official DSH application if this number is greater than the total inpatient hospital days on the medicare cost report; and

(b) The MMIS medicaid days as determined by the DSH reporting data file (DRDF) process if the Washington state medicaid days on the official DSH application do not match the eligible days on the final DRDF. If the hospital did not submit a DRDF, the ~~((department))~~ agency uses paid medicaid days from MMIS.

(7) The ~~((department))~~ agency administers the following DSH programs (depending on legislative budget appropriations):

(a) Low income disproportionate share hospital (LIDSH);

(b) Institution for mental diseases disproportionate share hospital (IMDDSH);

(c) ~~((General assistance unemployable))~~ Medical care services disproportionate share hospital ~~((GAUDSH))~~ (MCSDSH);

(d) Small rural disproportionate share hospital (SRDSH);

(e) Small rural indigent assistance disproportionate share hospital (SRIADSH);

(f) Nonrural indigent assistance disproportionate share hospital (NRIADSH);

(g) Public hospital disproportionate share hospital (PHDSH); ~~((and))~~

(h) Psychiatric indigent inpatient disproportionate share hospital (PIIDSH); and

(i) Children's health program disproportionate share hospital (CHPDSH).

(8) Except for IMDDSH, the ~~((department))~~ agency allows a hospital to receive any one or all of the DSH payment it qualifies for, up to the individual hospital's DSH cap (see subsection (10) of this section) and provided that total DSH payments do not exceed the statewide DSH cap. See WAC ~~((388-550-5130))~~ 182-550-5130 regarding IMDDSH. To be eligible for payment under multiple DSH programs, a hospital must meet:

(a) The basic requirements in subsection (5) of this section; and

(b) The eligibility requirements for the particular DSH payment, as discussed in the applicable DSH program WAC.

(9) For each SFY, the ~~((department))~~ agency calculates DSH payments for each DSH program for eligible hospitals using data from each hospital's base year. The ~~((department))~~ agency does not use base year data for GAUDSH and PIIDSH payments, which are calculated based on specific claims data.

(10) The ~~((department's))~~ agency's total DSH payments to a hospital for any given SFY cannot exceed the hospital-specific DSH cap for that SFY. Except for critical access hospitals (CAHs), the ~~((department))~~ agency determines a hospital's DSH cap as follows. The ~~((department))~~ agency:

(a) Uses the overall ratio of costs-to-charges (RCC) to determine costs for:

(i) Medicaid services, including medicaid services provided under managed care organization (MCO) plans; and

(ii) Uninsured charges; then

(b) Subtracts all payments related to the costs derived in (a) of this subsection; then

(c) Makes any adjustments required and/or authorized by federal statute or regulation.

(11) A CAH's DSH cap is based strictly on the cost to the hospital of providing services to medicaid clients served under MCO plans, and uninsured patients. To determine a CAH's DSH cap amount, the ~~((department))~~ agency:

(a) Uses the overall RCC to determine costs for:

(i) Medicaid services provided under MCO plans; and

(ii) Uninsured charges; then

(b) Subtracts the total payments made by, or on behalf of, the medicaid clients serviced under MCO plans, and uninsured patients.

(12) In any given federal fiscal year, the total of the ~~((department's))~~ agency's DSH payments cannot exceed the statewide DSH cap as published in the federal register.

(13) If the ~~((department's))~~ agency's DSH payments for any given federal fiscal year exceed the statewide DSH cap, the ~~((department))~~ agency will adjust DSH payments to each hospital to account for the amount overpaid. The ~~((department))~~ agency makes adjustments in the following program order:

(a) PHDSH;

(b) SRIADSH;

(c) SRDSH;

(d) NRIADSH;

(e) ~~((GAUDSH))~~ MCSDSH;

(f) CHPDSH;

~~((f))~~ (g) PIIDSH;

~~((g))~~ (h) IMDDSH; and

~~((h))~~ (i) LIDSH.

(14) If the statewide DSH cap is exceeded, the ~~((department))~~ agency will recoup DSH payments made under the various DSH programs, in the order of precedence described in subsection (13) of this section, starting with PHDSH, until the amount exceeding the statewide DSH cap is reduced to zero. See specific program WACs for description of how amounts to be recouped are determined.

(15) The total amount the ~~((department))~~ agency may distribute annually under a particular DSH program is capped by legislative appropriation, except for PHDSH, GAUDSH, and PIIDSH, which are not fixed amounts. Any changes in payment amount to a hospital in a particular DSH program means a redistribution of payments within that DSH program. When necessary, the ~~((department))~~ agency will recoup from hospitals to make additional payments to other hospitals within that DSH program.

(16) If funds in a specific DSH program need to be redistributed because of legislative, administrative, or other state action, only those hospitals eligible for that DSH program will be involved in the redistribution.

(a) If an individual hospital has been overpaid by a specified amount, the ~~((department))~~ agency will recoup that overpayment amount from the hospital and redistribute it among the other eligible hospitals in the DSH program. The additional DSH payment to be given to each of the other hospitals from the recouped amount is proportional to each hospital's share of the particular DSH program.

(b) If an individual hospital has been underpaid by a specified amount, the ~~((department))~~ agency will pay that hospital the additional amount owed by recouping from the other hospitals in the DSH program. The amount to be

recouped from each of the other hospitals is proportional to each hospital's share of the particular DSH program.

(17) All information related to a hospital's DSH application is subject to audit by the ~~((department))~~ agency or its designee. The ~~((department))~~ agency determines the extent and timing of the audits. For example, the ~~((department))~~ agency or its designee may choose to do a desk review of an individual hospital's DSH application and/or supporting documentation, or audit all hospitals that qualified for a particular DSH program after payments have been distributed under that program.

(18) If a hospital's submission of incorrect information or failure to submit correct information results in DSH overpayment to that hospital, the ~~((department))~~ agency will recoup the overpayment amount, in accordance with the provisions of RCW 74.09.220 and 43.20B.695.

(19) DSH calculations use fiscal year data, and DSH payments are distributed based on funding for a specific SFY. Therefore, unless otherwise specified, changes and clarifications to DSH program rules apply for the full SFY in which the rules are adopted.

#### NEW SECTION

**WAC 182-550-5300 Payment method—Children's health program disproportionate share hospital (CHP-DSH).** (1) Effective July 1, 2011, a hospital is eligible for the children's health program disproportionate share hospital (CHPDSH) payment if funding is legislatively appropriated and if the hospital:

- (a) Meets the criteria in WAC 182-550-4900;
- (b) Is an in-state or designated bordering city hospital; or
- (c) Provides services to low-income, children's health program (CHP) clients who, because of their citizenship status, are not eligible for medicaid nonemergency health coverage and who are encountering a nonemergency medical condition.

(2) Hospitals qualifying for CHPDSH payments will receive a per claim payment for inpatient and outpatient claims at the equivalent medicaid rate.

(3) The agency determines the CHPDSH payment for each eligible hospital in accordance with:

- (a) WAC 182-550-2800 for inpatient hospital claims submitted for CHP clients; and
- (b) WAC 182-550-7000 through 182-550-7600 and other sections in chapter 182-550 WAC that pertain to outpatient hospital claims submitted for CHP clients.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5150 Payment method—~~((General assistance-unemployable))~~ Medical care services disproportionate share hospital ~~((GAUDSH))~~ (MCSDSH).** (1) A hospital is eligible for the ~~((general-assistance-unemployable))~~ medical care services disproportionate share hospital ~~((GAUDSH))~~ (MCSDSH) payment if the hospital:

- (a) Meets the criteria in WAC ~~((388-550-4900))~~ 182-550-4900;
- (b) Is an in-state or designated bordering city hospital;

(c) Provides services to clients eligible under the medical care services program; and

(d) Has a medicaid inpatient utilization rate (MIPUR) of one percent or more.

(2) The ~~((department))~~ medicaid agency determines the ~~((GAUDSH))~~ MCSDSH payment for each eligible hospital in accordance with(=

~~((a)))~~ WAC ~~((388-550-4800))~~ 182-550-4800 for inpatient hospital claims submitted for ~~((general-assistance-unemployable(GAU)))~~ medical care services (MCS) clients(=and

~~((b))~~ WAC 388-550-7000 through 388-550-7600 and other sections in chapter 388-550 WAC that pertain to outpatient hospital claims submitted for GAU clients).

(3) The ~~((department))~~ agency makes ~~((GAUDSH))~~ MCSDSH payments to a hospital on a claim-specific basis for inpatient services.

#### WSR 12-17-046

#### PROPOSED RULES

#### TACOMA COMMUNITY COLLEGE

[Filed August 9, 2012, 7:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-015.

Title of Rule and Other Identifying Information: Final course grade appeal process.

Hearing Location(s): Tacoma Community College, Gig Harbor Campus, 3993 Hunt Street, Gig Harbor, WA 98335, on November 15, 2012, at 4:00 p.m.

Date of Intended Adoption: November 15, 2012.

Submit Written Comments to: Dr. Tim Stokes, Tacoma Community College, 6501 South 19th Street, Tacoma, WA 98466, e-mail [tstokes@tacomacc.edu](mailto:tstokes@tacomacc.edu), fax (253) 566-5022, by November 1, 2012.

Assistance for Persons with Disabilities: Contact Cathie Bitz by November 8, 2012, [cbitz@tacomacc.edu](mailto:cbitz@tacomacc.edu) or (253) 566-5101.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide a structured, equitable process for students to appeal final course grades that may have been assigned in an arbitrary and capricious manner.

Statutory Authority for Adoption: RCW 28B.50-140(13).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Tacoma Community College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dr. Tim Stokes, Tacoma Community College, (253) 566-5022.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Policy is relevant to Tacoma Community College students only.

A cost-benefit analysis is not required under RCW 34.05.328. Policy is relevant to Tacoma Community College students only.

August 8, 2012  
Mary A. Chikwinya  
Vice-President  
for Student Services

## Chapter 132V-123 WAC

### FINAL COURSE GRADE APPEAL PROCESS

#### NEW SECTION

**WAC 132V-123-010 Definitions.** For purposes of this chapter, the following definitions apply.

**Appropriate dean or manager** means the administrator responsible for the respective department offering the course which is under appeal.

**Arbitrary or capricious manner** means in a manner deemed to be inappropriately subjective or otherwise inconsistent with the learning assessment process stated on the syllabus.

**Documentation** means all materials relevant to the grade determination and to the grade appeal process. Examples include grade reports, graded work, syllabus, student/faculty correspondence, etc.

**Final grade** means the grade received in the course and reported to enrollment services.

**Hearing committee** means a group consisting of:

- (a) Two students selected by the president of the associated student body.
- (b) Two faculty members selected from four faculty elected each fall in instructional council to serve for the year.
- (c) One instructional administrator, appointed by the executive vice-president for academic and student affairs.

**Written appeal** means a document that includes:

- (a) A clear statement of why the student believes his or her final grade was not properly awarded.
- (b) What the student has done to resolve the issue.
- (c) What remedy the student is seeking.

**Written communication** means either electronic (TCC e-mail) or traditional correspondence.

#### NEW SECTION

**WAC 132V-123-020 Informal resolution.** If a student feels his or her final course grade was awarded incorrectly, in error, or in an arbitrary or capricious manner, his or her actions shall follow the steps below to address the discrepancy. Every effort will be made to resolve the discrepancy at the first level.

(1) Step 1.

(a) The student shall contact the instructor to discuss the student's concerns. This contact shall occur prior to the fifth instructional day of the next quarter. For a spring quarter grade this step may occur prior to the fifth instructional day in either of the following summer or fall quarters.

(b) This contact shall include:

(i) Discussing reasons the student believes there is a discrepancy;

(ii) Presenting other documentation that may have been overlooked in the determination of the final course grade.

(c) If the student believes his/her concern has not been adequately resolved in step 1, he/she may proceed to step 2.

(2) Step 2.

(a) The student shall contact the program/department chair or designated faculty member to discuss the student's concerns. This contact shall occur prior to the tenth instructional day of the next quarter.

(b) This contact shall include:

(i) Reasons the student believes there is a discrepancy;

(ii) Documentation;

(iii) The results of the meeting with the faculty member.

(c) The chair or designated faculty member will discuss the situation with the faculty member before giving the student his or her recommendation.

(d) The chair or designated faculty member will inform the student of his or her recommendation. This shall occur prior to the 15th instructional day of the next quarter. The chair or designated faculty member's recommendation is not binding.

(e) The chair or designated faculty member will inform the student of the formal appeal process if the chair's recommendation is not satisfactory to the student.

#### NEW SECTION

**WAC 132V-123-030 First level of formal appeal.** If a student is not satisfied with the informal resolution, he or she may begin the formal appeal.

(1) Step 1. The student must contact the appropriate dean or manager and present documentation and a written grade appeal. This contact shall occur prior to the 20th instructional day of the next quarter.

(2) Step 2. The dean or manager will investigate the grade appeal and provide written communication of the findings and decision to the faculty member and the student. The findings and decision shall be provided to the student within ten instructional days after receiving the written appeal. The investigation will include:

(a) Reviewing the faculty member's documentation;

(b) Reviewing the student's written appeal and documentation;

(c) Discussion with the student and faculty member individually or together.

#### NEW SECTION

**WAC 132V-123-040 Second level of formal appeal.** If either party is not satisfied with the first level of formal appeal decision, he or she may begin the second level of the formal appeal process.

(1) Step 1. The applicable party will present the executive vice-president for academic and student affairs with a written appeal of the first level decision and documentation. This appeal and documentation must be presented to the executive assistant for the executive vice-president within five instructional days of receiving the first level decision from the dean or manager.

(2) Step 2. The executive vice-president or his or her designee will investigate the appeal. This investigation shall be completed within ten instructional days of receiving the appeal. The investigation will consist of a review of all student and faculty member documentation and the findings of the dean or manager.

(3) Step 3. The executive vice-president shall within ten instructional days of receiving the appeal:

(a) Make a final decision; or

(i) The final decision will be conveyed in writing to the student, faculty member, and dean.

(ii) Any decision made by the executive vice-president and pursuant to this section is a final agency decision.

(b) Convene a hearing committee pursuant to WAC 132V-123-010.

(i) The committee will hear testimony from the student and from the faculty member.

(ii) The committee will examine documentation.

(iii) A decision shall be made by majority vote in deliberations.

(iv) The decision shall be communicated to the student and the faculty member within five instructional days of the hearing after all testimony and documentation have been presented.

(v) Any decision made by the committee is a final agency decision.

### WSR 12-17-072

#### WITHDRAWAL OF PROPOSED RULES CRIMINAL JUSTICE TRAINING COMMISSION

(By the Code Reviser's Office)

[Filed August 14, 2012, 10:10 a.m.]

WAC 139-07-010, 139-07-020, 139-07-030 and 139-07-040, proposed by the criminal justice training commission in WSR 12-04-080 appearing in issue 12-04 of the State Register, which was distributed on February 15, 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 12-17-073

#### PROPOSED RULES DEPARTMENT OF ECOLOGY

[Order 11-06—Filed August 14, 2012, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-111.

Title of Rule and Other Identifying Information: Oil spill contingency plan, chapter 173-182 WAC.

Hearing Location(s): Hearing 1 - Marysville combined with a webinar, on September 25, 2012, at 6:00 p.m. - Presentation, question and answer session followed by the formal public hearing.

Location: Holiday Inn Express, Skykomish Room, 8606 36th Avenue N.E., Marysville, WA 98270.

Webinar: Ecology is also offering this presentation, question and answer session and formal public hearing via webinar. Webinars are an on-line meeting forum that you can attend from any computer using internet access. To participate by phone, you will need to have a phone or computer with phone modem capability. For more information and instructions, go to [http://www.ecy.wa.gov/programs/spills/community\\_outreach/sppr\\_webinar.html](http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html).

Comments: Ecology will accept formal comments at the Marysville location and through the webinar audio portion by calling (800) 704-9804/participant code (88955236#). For more information and instructions, go to [http://www.ecy.wa.gov/programs/spills/community\\_outreach/sppr\\_webinar.html](http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html).

To join the webinar click on the following link for more information and instructions [http://www.ecy.wa.gov/programs/spills/community\\_outreach/sppr\\_webinar.html](http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html).

Hearing 2 - Vancouver, on September 27, 2012, at 3:00 p.m. - Presentation, question and answer session followed by the formal public hearing.

Location: Vancouver-Clark Parks and Recreation, Marshall Community Center, Elm Room, 1009 East McLoughlin Boulevard, Vancouver, WA 98663.

Date of Intended Adoption: December 14, 2012.

Submit Written Comments to: Sonja Larson, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [spillsrulemaking@ecy.wa.gov](mailto:spillsrulemaking@ecy.wa.gov), fax (360) 407-7288, by 5:00 p.m. on October 4, 2012.

Assistance for Persons with Disabilities: Contact Mary Ellen-Voss at (360) 407-7211, by September 20, 2012. If you have hearing loss, call TTY 771 or for Washington relay service if you have speech disability call (877)833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing to amend the oil spill contingency planning rule (chapter 173-182 WAC) to implement chapter 122, Laws of 2011 (E2SHB 1186). This rule making will:

- Update state oil spill preparedness planning standards to incorporate best achievable protection and best available technology.
- Improve the state's current vessels of opportunity system.
- Establish a volunteer coordination system.
- Require joint large-scale equipment deployment drills from tank vessels.
- Improve the state-required notification process to include potential spill threats as well as actual spills.
- Change contingency plan requirements for non-profit "umbrella" organizations.
- Update definitions.
- Make other changes related to oil spill contingency plans and ecology's contingency plan review and approval process.

Reasons Supporting Proposal: Following the direction of the legislature this rule will require oil spill response system improvements through a combination of best available technology and best available protection.

Statutory Authority for Adoption: Chapters 88.46, 90.48, 90.56 RCW, and chapter 122, Laws of 2011 (E2SHB 1186) authorizes and directs the department of ecology to implement rules on this subject.

Statute Being Implemented: Chapter 122, Laws of 2011 (E2SHB 1186) authorizes and directs the department of ecology to implement rules on this subject.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Sonja Larson, Department of Ecology, Lacey, Washington, (360) 407-6682; Implementation and Enforcement: Linda Pilkey-Jarvis, Department of Ecology, Lacey, Washington, (360) 407-7447.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

Executive Summary: The Washington state department of ecology (ecology) is amending regulatory chapter 173-182 WAC, Oil spill contingency plans, to implement chapter 122, Laws of 2011 (E2SHB 1186). The rule amendments include changes to:

- Update state oil spill preparedness planning standards to incorporate best achievable protection and best available technology.
- Enhance the state's current vessels of opportunity system.
- Establish a volunteer coordination system.
- Require joint large-scale equipment deployment drills from tank vessels.
- Enhance the state-required notification process to include potential spill threats as well as actual spills.
- Change contingency plan requirements for non-profit "umbrella" organizations to allow for a planning structure that supports approval of plans with a tiered approach.
- Update definitions.
- Make other changes related to ecology's contingency plan review and approval process.

Ecology last updated the oil spill contingency planning rule in 2007. Since the last update to the rule, two large oil spills - a spill in San Francisco, California (the Cosco Bursan oil spill) and a spill along the Gulf Coast (the Deepwater Horizon oil spill) - have impacted waters in the United States. These spills provided valuable lessons learned about our preparedness framework, and influenced a change in the law. The rule amendments are intended to incorporate lessons learned to influence changes to specific spill planning standards and drill standards.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule amendments on small versus large businesses. Ecology also considered the

impacts of the proposed amendments on local governments and other small public entities, to meet the requirements in the Governor's Executive Order 10-06.<sup>1</sup> Ecology was not able to get sufficient data for other measures (sales, hours of labor) often used to identify all businesses' ability to cope with compliance costs.

When comparing the per-employee costs of compliance with the proposed rule amendments, for overall program costs, ecology found that small businesses (with fifty or fewer employees) impacted by the rule incur \$268 to \$8.5 thousand per employee, while the largest ten percent of businesses incur a cost of \$5 to \$7 per employee.

Ecology's scope in reducing the impacts specifically to small businesses was limited by the scope of this rule making. The above disproportionate impacts, however, are mitigated - if not eliminated - by basic business behaviors and characteristics. The smaller primary response contractors (PRCs) perform limited or specialized tasks, and may not incur the costs of many of the new requirements under the proposed rule amendment - simply because that PRC does not perform those contracted tasks. The large PRCs, on the other hand, perform a broader range of contracted tasks, and are likely to incur more of the new requirements under the proposed rule amendments than small PRCs are. Ultimately, one can argue that no PRC is required to take on any of the prospective new costs under the proposed rule amendments, since none of them are required to be a PRC, and can instead focus on other contracted response tasks.

Based on the Washington state office of financial management's input-output model of the state economy, ecology calculated likely jobs outcomes. As compliance costs reduce direct employment in complying industries, they become transfers of income to other industries that manufacture and support equipment (on-water, aerial), as well as those submitting for vessels of opportunity (VOO) training. Overall, the proposed rule amendments could result in net short-term gains in employment of twenty to forty-seven jobs. These prospective changes in overall employment in the state are actually the sum of multiple small increases and decreases across industries in the state, in addition to larger losses in water transportation, and to the large gains in the aircraft and ship manufacturing industries.

#### Section 1: Introduction and Background.

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule amendments to chapter 173-182 WAC are likely to have a disproportionate impact on small business. Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by ecology.

This document is intended to be read with the associated cost-benefit analysis (Ecology Publication #12-08-005), which contains more in-depth discussion of the analyses, as well as references and appendices.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment - the way oil spill contingency planning would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

Description of the proposed rule amendments:

- Update state oil spill preparedness planning standards to incorporate best achievable protection and best available technology.
- Enhance the state's current vessels of opportunity system.
- Establish a volunteer coordination system.
- Require joint large-scale equipment deployment drills from tank vessels.
- Enhance the state-required notification process to include potential spill threats as well as actual spills.
- Change contingency plan requirements for non-profit "umbrella" organizations to allow for a planning structure that supports approval of plans with a tiered approach.
- Update definitions.
- Make other changes related to ecology's contingency plan review and approval process.

Reasons for the proposed rule amendments:

Following the direction of the legislature in ESHB 1186, the proposed rule amendments would require response system improvements through a combination of best available technology and best available protection. The equipment, training, and planning elements required through these rule amendments strive to pair the right equipment with well-trained personnel. These elements are essential in delivering a rapid, aggressive, and well-coordinated response to large spills.

The proposed rule amendments are a step toward building a response system that utilizes best achievable protection to strengthen our ability to operate safely and continuously at night and during inclement weather conditions including rain, fog, waves, and high currents that are often experienced in Washington state waters.

To this end, the rule requires investment in:

- New aerial surveillance capability.
- Recovery equipment capable in waves and higher encounter rates.
- Training of oil-spill response personnel.
- Vessels of opportunity and crew.
- Technical manuals as a way to communicate how the plan holder's response capability represents best achievable protection, and can be verified over time using the five-year best achievable protection review cycle.

Ecology last updated the oil spill contingency planning rule in 2007. Since the last update to the rule, two large oil spills - a spill in San Francisco, California (the Cosco Bursan oil spill) and a spill along the Gulf Coast (the Deepwater Horizon oil spill) - have impacted waters in the United States.

These spills provided valuable lessons learned about our preparedness framework, and influenced a change in the law. The rule amendments are intended to incorporate lessons learned to influence changes to specific spill planning standards and drill standards.

Through the proposed rule amendments, ecology is enhancing the current vessel of opportunity requirements and strengthening our ability to respond to oil spills. The extensive use of commercial fishing and other vessels during the Deepwater Horizon Spill response demonstrated the value of partnering with local marine professionals ahead of a large spill to ensure vessels of opportunity are well-trained and can operate safely as an effective part of spill response.

Regulatory baseline:

In most cases, the regulatory baseline for cost-benefit analysis's (CBA) is the existing rule. Where there is no existing rule, federal and local regulations are the baseline. In the case of the proposed amendments to the oil spill contingency plans rule, the existing rule and existing federal requirements comprise the baseline. See the associated CBA (Ecology Publication 12-08-005) for extensive discussion of the baseline.

Section 2: Compliance Costs.

Different types of covered vessels, facilities, and entities are affected differently by the proposed rule. Most covered vessels use umbrella plans (two approved nonprofit organizations that hold plans for one thousand five hundred vessels in the Columbia River, and one thousand three hundred fifty-three vessels along the outer coast, in the Strait of Juan de Fuca, and in Puget Sound). There are twenty-eight additional independent approved plans (for individual firms or subsidiaries).

Plan holders in any of these cases (whether they are vessels, facilities, or umbrella plans) may contract with twelve state-approved PRCs to plan, prepare for, and execute required actions.

Ecology multiplied unit costs as calculated in the next section by the expected quantities of compliance behavior with the proposed rules, as based on:

- 1,500 vessels in Columbia River umbrella plan.
- 1,353 vessels in outer coast, Strait of Juan de Fuca, and Puget Sound.
- 28 independent approved contingency plans.
- 12 PRCs.

Ecology estimated present value compliance costs over twenty years.

Ecology estimated costs as follows: For a full discussion of cost calculation methodologies and sources, see the CBA (Ecology Publication #12-08-005). Note that all costs are estimated conservatively high when dealing with uncertainty.

Table 1: Present-Value Costs of the Proposed Rule Amendments

<b>Present-Value Costs of the Proposed Rule Amendments</b>		
<b>Cost</b>	<b>Low Present Value</b>	<b>High Present Value</b>
FLIR plus additional	\$300,000	\$700,000
BAT capability <sup>2</sup>		

<b>Present-Value Costs of the Proposed Rule Amendments</b>		
<b>Cost</b>	<b>Low Present Value</b>	<b>High Present Value</b>
Additional spotting resources	\$691	\$1,280
Four-hour planning standard	\$350,000	\$1,750,000
Dedicated on-water storage	\$250,000	\$1,000,000
Dedicated on-water storage maintenance	\$205,327	\$821,308
Describe storage and recovery as systems	\$1,727	\$3,200
Identification of one hundred shore cleanup workers and supervisors	\$867	\$1,600
9 miles passive cleanup equipment	\$55,000	\$55,000
Plan update with process to obtain additional resources	\$691	\$1,280
VOO database (ecology cost)	\$27,000	\$27,000
VOO database ongoing costs (ecology cost)	\$303,884	\$303,884
Vetting VOO	\$52,703	\$64,447
VOO training	\$3,864,223	\$4,330,595
VOO deployment drill	\$1,210,728	\$1,356,850
Identify worst-case discharge volume	\$22	\$40
Identify spill management team for all enrolled members	\$22	\$40
Describe process for activating supplemental resources	\$1,727	\$3,200
Identify and list staff to be deployed	\$1,036	\$1,920
Train staff to be deployed	\$158,510	\$504,350
List response equipment on WRRL (or equivalent)	\$1,036	\$1,920
List all staff, training, VOO, communications assets, remedial substances in contracts	\$2,073	\$3,840
<b>TOTAL 20-YEAR PRESENT VALUE COST</b>	<b>\$6,787,267</b>	<b>\$10,931,754</b>

Many of these costs are assumed to be shared across multiple entities, as allowed by the proposed rule amendments, to minimize compliance costs.

To be able to apply appropriate compliance costs to individual plan holders, ecology separated costs into the following groups:

- Approved vessel plan holder costs.
- Umbrella plan holder costs.
- PRC costs.
- Shared asset costs (shared by the above, as well as facility plan holders).

Table 2: Costs by Group

<b>Approved plan holder costs</b>	<b>low</b>	<b>high</b>	<b># of entities</b>
Additional spotting resources	\$691	\$1,280	30
Technical manual systems descriptions	\$1,727	\$3,200	8
Contracting time for shoreline cleanup and supervisors	\$867	\$1,600	8
Updating plans for additional resource procedures	\$691	\$1,280	8
<b>Umbrella plan holder costs</b>	<b>low</b>	<b>high</b>	<b># of entities</b>
Additional spotting resources	\$691	\$1,280	8
Technical manual systems descriptions	\$1,727	\$3,200	8
Contracting time for shoreline cleanup and supervisors	\$867	\$1,600	8
Updating plans for additional resource procedures	\$691	\$1,280	30
Identify worst case discharge volume	\$22	\$40	2
Identify spill management team	\$22	\$40	2
Require direct contract for all resource to meet the worst case discharge	\$1,727	\$3,200	2

<b>PRC costs</b>	<b>low</b>	<b>high</b>	<b># of entities</b>
Identify staff expected to be deployed for oil spills or to meet planning standards	\$1,036	\$1,920	12
Train staff expected to be deployed for oil spills or to meet planning standards	\$158,510	\$504,350	12
List response equipment on WRRL or equivalent	\$1,036	\$1,920	12
<b>Shared asset costs</b>	<b>low</b>	<b>high</b>	<b># of entities</b>
Mounted FLIR plus additional BAT capability	\$300,000	\$700,000	8
Four Hour Planning standard	\$350,000	\$1,750,000	8
Dedicated on-water storage	\$250,000	\$1,000,000	30
Dedicated on-water storage maintenance	\$205,327	\$821,308	30

9 miles of passive cleanup equipment	\$55,000	\$55,000	8
VOO Vessel Database	\$27,000	\$27,000	Ecology
VOO Vessel database maintenance	\$303,884	\$303,884	Ecology
Vetting VOO	\$52,703	\$64,447	8
VOO Training Specified	\$3,864,223	\$4,330,595	8
VOO Deployment	\$1,210,728	\$1,356,850	8

Section 3: Quantification of Cost Ratios.

Ecology calculated the estimated per-entity costs to comply with the proposed rule amendments. Cost estimates and ranges are for the average or typical plan holder. This causes inherent estimation of disproportionate costs across differently sized businesses. Similarly, different compliance costs for different types of entity [entities] also inherently generate nonuniform costs.

In this section, ecology summarizes compliance cost per employee at plan holders of different sizes. As expected, costs per employee are larger for smaller businesses, since compliance costs are calculated per plan holder, by type only. The table below summarizes total cost per entity, assuming uniform sharing of the costs of shared assets.

Table 3: Costs per Entity, by Type

	<b>Low Cost per Entity</b>	<b>Low Shared Asset Cost</b>	<b>High Cost per Entity</b>	<b>High Shared Asset cost</b>	<b>Low Total Cost per Entity</b>	<b>High Total Cost per Entity</b>
Vessel Plan Holder	\$434	\$744,259	\$803	\$1,092,822	<b>\$744,693</b>	<b>\$1,093,624</b>
Umbrella Plan Holder	\$1,319	\$744,259	\$2,443	\$1,092,822	<b>\$745,578</b>	<b>\$1,095,264</b>
PRC	\$13,382		\$42,349		<b>\$13,382</b>	<b>\$42,349</b>
Facility Plan Holder	\$46	\$15,178	\$85	\$60,710	<b>\$15,224</b>	<b>\$60,796</b>

The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit agencies, or for government agencies. Within this definition, there are no small approved plan or umbrella plan holders. Smaller local offices of larger parent companies are considered based on the size of their parent, as this is a better reflection of ability

to cope with compliance costs, relative to independent small businesses.

In the PRC group, two are out-of-state, and one is a non-profit. These PRCs are excluded from this analysis as well.<sup>3</sup> Of the remaining nine PRCs, six are small businesses as defined in the statute governing this analysis (they have fifty or fewer employees). These PRCs would incur per-employee costs between \$268 and \$8.5 thousand. This range is higher

than the comparable range for the largest ten percent of these businesses (one business), of \$5 to \$17 per employee.

Section 4: Action Taken to Reduce Small Business Impacts.

The above disproportionate impacts are mitigated - if not eliminated - by basic business behaviors and characteristics. The smaller PRCs perform limited or specialized tasks, and may not incur the costs of many of the new requirements under the proposed rule amendment - simply because that PRC does not perform those contracted tasks. The large PRCs, on the other hand, perform a broader range of contracted tasks, and are likely to incur more of the new requirements under the proposed rule amendments than small PRCs are. Ultimately, one can argue that no PRC is required to take on any of the prospective new costs under the proposed rule amendments, since none of them are required to be a PRC, and can instead focus on other contracted response tasks.

Section 5: Small Business and Government Involvement.

During the CR-101 (informal rule-making phase) starting in January 2012, the department convened a special rule advisory committee to provide informal comment on the draft regulation and advise ecology about how environmental, economic and other issues might be addressed. The committee met regularly from January through June 2012. Committee members included invited representatives and observers from:

- Oil handling facilities and oil shipping companies.
- Umbrella oil spill contingency plan holders.
- Spill response contractors.
- Tug and towing companies.
- Commercial fishing vessels.
- Cargo and other shipping companies.
- Commercial shellfish growers.
- Commercial fisheries.
- Washington ports.
- Tribal governments.
- Counties and cities.
- Environmental organizations.
- Recreational interests.
- State and federal agencies.

Many of these committee members represented or were small businesses or local governments.

All the committee meetings were open to the public and available through webinar.

Ecology met with the rule advisory committee six times between January and June 2012. Each meeting focused on a specific topical area of the rule. Following the meeting, meeting notes and redrafted versions of the rule were developed to be revisited at future meetings. The iterative process helped to ensure sustained participation in the committee and more than one opportunity to comment on the draft language. Ecology prepared press releases, focus sheets and other explanatory materials for distribution to mailing and e-mail lists for each of the committee meetings. In addition, information was posted on the spills program rule web site which details the process and other opportunities for involvement.

Ecology also established special web sites for the proposed rule at [www.ecy.wa.gov/programs/spills/rules/1106](http://www.ecy.wa.gov/programs/spills/rules/1106).

html and the rule advisory committee at [www.ecy.wa.gov/programs/spills/rules/1106advisorycommittee.html](http://www.ecy.wa.gov/programs/spills/rules/1106advisorycommittee.html). The initial draft rule, also available for public comment, was constantly updated and improved through this six-month iterative process. Ecology incorporated more than three hundred comments, all of which served to improve the final updated draft rule language.

The department also distributed news releases to media across the state prior to each meeting (see [www.ecy.wa.gov/news/2012/022.html](http://www.ecy.wa.gov/news/2012/022.html), [www.ecy.wa.gov/news/2012/061.html](http://www.ecy.wa.gov/news/2012/061.html), [www.ecy.wa.gov/news/2012/092.html](http://www.ecy.wa.gov/news/2012/092.html), [www.ecy.wa.gov/news/2012/121.html](http://www.ecy.wa.gov/news/2012/121.html), and [www.ecy.wa.gov/news/2012/153.html](http://www.ecy.wa.gov/news/2012/153.html)).

Section 6: NAICS Codes of Impacted Industries.

The table below lists NAICS codes for industries ecology expects could be impacted by the proposed rule amendments.<sup>4</sup>

Table 4: NAICS Codes that Include Businesses Possibly Needing to Comply with the Proposed Rule Amendments

541711	237120	237310
237110	483113	483211
488330	493190	424710
562910	424720	486110
561990	322110	541614
336611	324110	

Section 7: Impact on Jobs.

Ecology used the Washington state office of financial management's 2002 Washington input-output model<sup>5</sup> to estimate the impact of the proposed rule on jobs in the state. The model accounts for interindustry impacts and spending multipliers of earned income and changes in output.

The proposed rule will result in transfers of money within and between industries; plan holders and PRCs complying with the proposed rule amendments will pay employees or businesses providing equipment or services, including VOO.

Under the low-cost estimates, the Washington state economy could experience a net gain of twenty-four jobs in the short run (under the proposed rule amendments), as compliance costs transfer funds from complying entities to those manufacturing physical aerial and sea assets, and to training VOO. Similarly, under the high-cost estimates, the Washington state economy could gain forty-six cumulative jobs in the short run, as expenditures on equipment and training support jobs in manufacturing and VOO. These prospective changes in overall employment in the state are actually the sum of multiple small increases and decreases across industries in the state, in addition to the large gains in the aircraft and ship manufacturing industries.

<sup>1</sup>[http://www.governor.wa.gov/news/Executive\\_Order\\_10-06.pdf](http://www.governor.wa.gov/news/Executive_Order_10-06.pdf).

<sup>2</sup>Best available technology.

<sup>3</sup>Impacts to all entities, public and private, in-state and out-of-state are considered in the cost-benefit analysis, Ecology Publication 12-08-005.

<sup>4</sup>North American Industry Classification System (NAICS) codes have largely taken the place of standard industry classification (SIC) codes in the categorization of industries.

<sup>5</sup>See the Washington State Office of Financial Management's site for more information on the Input-Output model. <http://www.ofm.wa.gov/economy/io/2002/default.asp>.

A copy of the statement may be obtained by contacting Education and Outreach Specialist, Spills Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7211, fax (407) 407-7288 [(360) 407-7288], e-mail [spillsrulemaking@ecy.wa.gov](mailto:spillsrulemaking@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Education and Outreach Specialist, Spills Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7211, fax (407) 407-7288 [(360) 407-7288], e-mail [spillsrulemaking@ecy.wa.gov](mailto:spillsrulemaking@ecy.wa.gov).

August 14, 2012

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-010 Purpose.** The purpose of this chapter is to establish covered vessel and facility oil spill contingency plan requirements (Part II) (~~and~~), drill and equipment verification requirements (Part III), primary response contractor standards (Part IV) and recordkeeping and compliance information (Part V).

(1) The provisions of this chapter, when followed, should be implemented and construed so that they will:

~~((1))~~ (a) Maximize the effectiveness and timeliness of oil spill response by plan holders and response contractors;

~~((2))~~ (b) Ensure continual readiness, maintenance of equipment and training of personnel;

~~((3))~~ (c) Support coordination with state, federal, and other contingency planning efforts; (~~and~~

(4)) (d) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills; and

(e) For covered vessels, provide the highest level of protection that can be met through the use of best achievable technology and those staffing levels, training procedures, and operational methods that constitute best achievable protection as informed by the BAP five year review cycle (WAC 173-182-621) and as determined by ecology.

(2) The planning standards described in this chapter do not constitute clean-up standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this section does not constitute failure to comply with a contingency plan, for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law so that all reasonable efforts are made to do so. In a spill or drill deployment of equipment and personnel shall be guided by safety considerations. The responsible party must take all actions necessary and appropriate to immediately collect and remove, contain, treat, burn and disperse oil entering waters of the state and address the entire volume of an actual spill regardless of the planning standards.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-015 Applicability.** (1) This chapter applies to owners and operators of onshore and offshore facilities and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to (~~Washington~~) nonprofit corporations, their enrolled members, and agents that submit and implement plans on behalf of onshore and offshore facilities and covered vessels.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

AMENDATORY SECTION (Amending Order 07-14, filed 11/7/07, effective 12/8/07)

**WAC 173-182-030 Definitions.** (1) "Aerial oil spill spotter" (spotter) means personnel trained to:

(a) Direct vessels to the heaviest concentrations of oil;

(b) Direct dispersant resources;

(c) Direct in situ burn resources; and

(d) Observe document and report the effectiveness of response operations.

(2) "Aerial observer" means a trained observer that monitors, records and reports the spill characteristics including the shoreline impacts, area oiled, color, and thickness of the oil. Observers also provide data to the command post through the development of detailed maps of the area oiled and the resources in the field as well as other photographs, videos, or documents developed to support planning.

(3) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. Ecology's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

(a) The additional protection provided by the measures;

(b) The technological achievability of the measures; and

(c) The cost of the measures.

(4) "Best achievable technology" means the technology that provides the greatest degree of protection. Ecology's determination of best achievable technology will take into consideration:

(a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(b) The effectiveness, engineering feasibility, and the commercial availability of the technology.

(5) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate

for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

~~((2))~~ (6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

~~((3))~~ (7) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

~~((4))~~ (8) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

~~((5))~~ (9) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or other provider or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that: Identifies personnel, equipment and services capable of being provided by the primary response contractor or other provider within stipulated planning standard times; acknowledges that the primary response contractor ~~((intends to))~~ or other provider commits the identified resources in the event of an oil spill.

~~((6))~~ (10) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

~~((7))~~ (11) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

~~((8))~~ (12) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

~~((9))~~ (13) "Director" means the director of the state of Washington department of ecology.

~~((10))~~ (14) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

~~((11))~~ (15) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

~~((12))~~ (16) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

~~((13))~~ (17) "Ecology" means the state of Washington department of ecology.

~~((14))~~ (18) "Emergency response towing vessel" means a towing vessel stationed at Neah Bay that is available to respond to vessel emergencies upon call out under the contingency plan. The emergency response towing vessel shall be available to the owner or operator of the covered vessel tran-

siting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, Vancouver Island, Canada.

(19) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

~~((15))~~ (20) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

~~((16))~~ (21) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

~~((17))~~ (22) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

~~((18))~~ (23) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

~~((19))~~ (24) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

~~((20))~~ (25) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

~~((21))~~ (26) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

~~((22))~~ (27) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((23))~~ (28) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

~~((24))~~ (29) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

~~((a))~~ (i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

~~((b))~~ (ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

~~((25))~~ (b) A nonpetroleum oil with a specific gravity less than 0.8.

(30) "Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

(31) "Northwest Area Contingency Plan (NWACP)" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

~~((26))~~ (32) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

~~((27))~~ (33) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and pressure and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

~~((28))~~ (34) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

~~((29))~~ (35) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~((30))~~ (36) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

~~((31))~~ (37) "Operational period" means the period of time scheduled for execution of a given set of operational actions as specified in the incident action plan. The operational period coincides with the completion of one planning cycle.

(38) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility; ~~((and))~~

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment~~((:)); and~~

(d) Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~((32))~~ (39) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

~~((33))~~ (40) "Passive recovery" means a tactic that uses absorbent material to mitigate impacts to shorelines.

(41) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

~~((a))~~ (i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

~~((b))~~ (ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

~~((c))~~ (iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

~~((d))~~ (iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

~~((34))~~ (b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(42) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

~~((35))~~ "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection (14) of this section.

~~((36))~~ (43) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

~~((37))~~ (44) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

~~((38))~~ (45) "Plan holder" means all covered facility owner/operators required to submit contingency plans, all covered vessel owner/operators required to submit contingency plans or enroll under a vessel umbrella plan and the umbrella plan holders that submit contingency plans on

behalf of multiple covered vessels owner/operators or facility owner/operators.

~~((46))~~ (46) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

~~((39))~~ (47) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

~~((40))~~ (48) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

~~((41))~~ (49) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

~~((42))~~ (50) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessel of opportunity response system to respond when needed and available.

(51) "Resident" means the spill response resources are staged at a location within the described planning area.

~~((43))~~ (52) "Responsible party" means a person liable under RCW 90.56.370.

~~((44))~~ (53) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((45))~~ (54) "Spill" means an unauthorized discharge of oil which enters waters of the state.

~~((46))~~ (55) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

~~((47))~~ (56) "Systems approach" means the infrastructure and support resources necessary to mobilize, transport, deploy, sustain, and support the equipment to meet the planning standards, including mobilization time, trained personnel, personnel call out mechanisms, vehicles, trailers, response vessels, cranes, boom, pumps, storage devices, etc.

(57) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((48))~~ (58) "Technical manual" means a manual intended to be used as a planning document to support the evaluation of best achievable protection systems for potential response capability of plan holder owned and PRC dedicated and nondedicated equipment.

(59) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

~~((49))~~ (60) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

~~((50))~~ (61) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

~~((51))~~ (62) "Umbrella plan" means a single plan that is prepared by a plan holder to cover((s)) multiple vessels ((or facilities)).

~~((52))~~ (63) "Vessels of opportunity response system" means nondedicated vessels and operating personnel, including fishing and other vessels, available to assist in spill response when necessary. The vessels of opportunity are under contract with and equipped by contingency plan holders to assist with oil spill response activities including, but not limited to, on-water oil recovery in the near shore environment, the placement of oil spill containment booms to protect sensitive habitats, and providing support of logistical or other tactical actions.

(64) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

~~((53))~~ (65) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((54))~~ (66) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

~~((55))~~ (67) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-110 Authority to submit contingency plan.** (1) For tank vessels, a plan may be submitted by any of the following:

- (a) The owner or operator of the tank vessel; or
- (b) The owner or operator of the facilities at which the tank vessel will be unloading its cargo; or
- (c) A (~~Washington state~~) nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the tank vessel owner or operator is a member; or
- (d) A PRC contractually obligated to provide containment and cleanup services to the tank vessel company.

(2) For covered vessels other than tank vessels, a plan may be submitted by any of the following:

- (a) The owner or operator of the covered vessel; or
- (b) The agent for the covered vessel provided that the agent resides in this state; or
- (c) A (~~Washington state~~) nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the covered vessel owner or operator is a member; or
- (d) A PRC contractually obligated to provide containment and cleanup services to the covered vessel company.

(3) For facilities, a plan may be submitted by any of the following:

- (a) The owner or operator of the facility; or
- (b) A PRC contractually obligated to provide containment and cleanup services to the facility.

(4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each covered vessel or facility.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-120 Submitting a contingency plan.**

(1) Plan holders shall submit ~~((a))~~ plans to ecology no less than sixty-five days prior to ~~((the))~~ their planned date for beginning of operations in Washington.

(2) The plan holder shall submit two copies of the plan and all appendices. ~~((However, if the plan and appendices are submitted with an acceptable use of electronic copy, the plan holder shall submit at least one paper copy.))~~ Electronic submission of plans is encouraged, provided it is in an electronic format acceptable to ecology.

(3) Once approved, plan holders shall resubmit their plans to ecology every five years for review and approval.

(4) The plans and all subsequent updates shall be delivered to:

Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Preparedness Section, Contingency Plan Review  
Mailing address:  
P.O. Box 47600  
Olympia, WA 98504-7600  
Physical Address:

300 Desmond Drive  
Lacey, WA 98503

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-130 Phase in language.** (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications. Each update must contain all necessary content and meet the requirements of this chapter.

(2) For existing approved facility plan holders(~~(:~~

~~(a) Plans holders for onshore facilities capable of storing one million gallons or more of oil shall submit a revised contingency plan to ecology six months after the effective date of this chapter; except, plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In submitting the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.~~

~~(b) All other onshore facilities shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.))~~ Within six months after the effective date of this chapter, all facility plan holders must update their plans to comply with the following sections as applicable to the facility:

(a) Binding agreement (WAC 173-182-220).

(b) Contingency plan general content (WAC 173-182-230(7)), claims procedures.

(c) Contingency plan general content (WAC 173-182-260 (4)(c)(ii)), products handled.

(d) Facility spills to ground notifications (WAC 173-182-264).

(e) Planning standards for dispersants (WAC 173-182-325).

(f) Planning standard for Group 5 Oils (WAC 173-182-324).

(g) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(3) For existing approved tank vessel plan holders and vessel umbrella plan holders, the following is required, as applicable to the plan holder:

~~((a) Plan holders for tank vessels submit a revised contingency plan to ecology six months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In the revised plan, plan holders must include~~

a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) ~~All other covered vessels shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.~~

(4) ~~PRCs shall submit new applications to ecology within twelve months.)~~ (a) Within six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Binding agreement (WAC 173-182-220).

(ii) Contingency plan general content (WAC-173-182-230 (5)(f)).

(iii) Contingency plan general content (WAC-173-182-230 (6)(a)(1-7)).

(iv) Contingency plan general content (WAC 173-182-230(7)), claims procedures.

(v) Aerial surveillance planning standard (WAC 173-182-321(2)), Additional surveillance assets.

(vi) Planning standard for dispersants (WAC 173-182-325). (vii) Planning standard for Group 5 Oils (WAC 173-182-324).

(viii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(b) Within eighteen months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 1 - Cape Flattery/Strait of Juan De Fuca.

(ii) Aerial surveillance planning standard (WAC 173-182-321(1)), Helicopter/fixed wing.

(iii) Dedicated on-water storage (WAC 173-182-335), at least twenty-five percent of the total worst case discharge requirement.

(iv) San Juan County planning standard (WAC 173-182-370), four hour planning standard.

(v) Neah Bay staging area (WAC 173-182-395), four hour planning standard.

(vi) Covered vessel planning standard for shoreline cleanup (WAC 173-182-522).

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(c) Within thirty-six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 2 - San Juan Islands/North Puget Sound.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 4 - Lower Columbia River.

(iii) Aerial surveillance planning standard (WAC 173-182-321(3)), Helicopter/fixed wing with forward looking infrared.

(iv) Covered vessel plan holder's technical manual requirement (WAC 173-182-349).

(v) Commencement Bay Quartermaster Harbor planning standard (WAC 173-182-380), four hour planning standard.

(vi) Cathlamet staging area (WAC 173-182-415), four hour planning standard.

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(d) Within forty-eight months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 6 - Grays Harbor.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 3 - South Puget Sound and Central Puget Sound.

(iii) Vessels of opportunity planning standard (WAC 173-182-317), Region 5 - Admiralty Inlet, Hood Canal and North Puget Sound.

(iv) Grays Harbor planning standard (WAC 173-182-450), four hour planning standard.

(v) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(4) Within eighteen months after the effective date of this chapter, all primary response contractors must update their applications to comply with the following section: Primary response contractor application content, submittal and review (WAC 173-182-810).

(5) Each plan update will be given a thirty day public review and comment period. Ecology will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-140 Plan maintenance (~~and reporting obligations~~).** ~~((+))~~ At least once annually, plan holders shall review the entire plan for accuracy and either:

~~((a))~~ (1) Update and distribute the amended page(s) of the plan to ecology for review and approval; or

~~((b))~~ (2) If no plan changes are needed, send a letter to ecology confirming that the existing plan is still accurate.

~~((2))~~ If there is a temporary, significant change to response readiness, the plan holder shall notify ecology in writing within twenty-four hours and provide a schedule for the prompt return of the plan to full operational status. Changes which are considered significant include loss of equipment that affects the planning standards provided in the plan, or permanent loss of initial response personnel listed in command and general staff ICS positions provided in the

plan or changes in normal operating procedures. A facsimile or electronic mail will be considered sufficient written notice.

(3) Failure to notify ecology of significant changes shall be considered noncompliance with this chapter.

(4) If the change to the plan is permanent, the plan holder then shall have thirty calendar days to distribute the amended page(s) of the plan to ecology for review.

(5) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or revoke approval of the plan.)

#### NEW SECTION

**WAC 173-182-142 Significant changes to approved plans require notification.** (1) At any point during the five year approval period, if there is a temporary or permanent significant change in the personnel or response equipment described in the plan, the plan holder shall:

(a) Notify ecology in writing within twenty-four hours of the change; and

(b) Provide both a schedule for the prompt return of the plan to full operational status and a proposal for any backfill to compensate for the temporary significant change. This proposal shall be reviewed by ecology.

(2) Changes which are considered significant include:

(a) Loss of equipment that results in being out of compliance with any planning standard;

(b) If greater than ten percent of available boom, storage, recovery, dispersants, in situ burn or shoreline clean-up equipment is moved out of the homebase as depicted on the WRRL;

(c) Transfers of equipment to support spill response for out-of-region spills;

(d) Permanent loss of initial response personnel listed in command and general staff ICS positions provided in the plan;

(e) Permanent loss of personnel designated as the binding agreement signer;

(f) Changes in normal operating procedures as described below:

(i) For facilities changes in the oil types handled; changes in storage, capacity and tankage; changes in handling or processing of any product; and

(ii) For vessels changes in the oil types handled.

(g) Changes in equipment ownership if used to satisfy a plan holder planning standard; or

(h) Modification or discontinuing of any mutual aid, letter of intent or contract agreement.

(3) Notification by facsimile or e-mail will be considered written notice.

(4) Failure to report changes in the plan could result in the loss of plan approval.

(5) If the proposed change to the plan is to be made permanent, the plan holder then shall have thirty calendar days from notification to ecology to distribute the amended page(s) of the contingency plan to ecology for review and approval.

(6) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or disapprove the plan.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

#### **WAC 173-182-145 Plan implementation procedures.**

(1) Every plan holder, including each person whose vessel ((or facility)) enrolls in coverage under an umbrella plan, is required to implement the Washington approved plan ((throughout the)) in any response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

(2) Approval from ecology must be received before any significant aspect of the spill response is conducted in a manner contrary to the plan unless:

(a) Such actions are necessary to protect human health and safety; or

(b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or

(c) State and federal on-scene coordinators have directed such actions.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-220 Binding agreement.** (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by the plan holder, owner or operator, or a designee with authority to bind the owners and operators of the facility or vessel covered by the plan. In the case of an umbrella plan, the umbrella plan holder that submitted the umbrella plan on behalf of enrolled vessels must sign the binding agreement. The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills ((in Washington)) and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan; ((and))

(d) Verify authority and capability of the plan holder to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-230 Contingency plan general content.** (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the state-wide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.

(ii) For vessel umbrella plans ~~(, a worst case volume for each port of operation may be submitted to ecology for consideration, if the operations of enrolled vessels differ by port)~~ that enroll both tank vessels and nontank covered vessels, specify the worst case discharge volume and product type for both tank and nontank covered vessels for each port covered by the contingency plan.

(iii) For multiple facilities using a single umbrella plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) Inventory all tanks and list ((by)) tank capacity all oil(s) or product(s) handled by name and include: density, gravity (API), group ((and amount the oil handled)).

(iii) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(iv) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel plan content:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) ~~((Type of oil(s) handled (group);~~

~~(g) Oil volume capacity by group;~~

~~(h))~~ List all oil(s) or product(s) by name and include: density, gravity (API), group and amount carried as cargo or fuel.

(g) Description of the operations covered by the plan.

Include a written description and diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) Special exemptions for vessel umbrella plans shall, at a minimum, include the following:

(a) In lieu of providing vessels names, call signs and country of registry, vessel umbrella plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall ~~((make the information available to ecology upon request))~~ provide ecology twenty-four hour access to the enrolled vessels list via the internet in a format acceptable to ecology. The list shall be updated daily, or at a minimum every three days. The list must at a minimum include the following:

(i) Vessel name;

(ii) Vessel type;

(iii) Worst case discharge type and quantity;

(iv) The name and API gravity of the densest oil being handled on the enrolled vessels;

(v) Qualified individual/spill management team;

(vi) Agent;

(vii) PRC/supplemental resources provider; and

(viii) P&I club.

(b) Umbrella plans for vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

(7) Plans shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

#### NEW SECTION

**WAC 173-182-232 Requirements for vessel umbrella plans maintaining additional agreements for supplemental resources.** (1) Approved umbrella plans provide an efficient and cost-effective mechanism for enrolling vessel owner and operators in contingency plan coverage. Umbrella plans provide response resources to meet the requirements of this chapter. The umbrella plan may be approved for more than one worst case discharge, by port, in areas of operation covered by the plan. Any owner or operator of a covered vessel having a worst case discharge volume that exceeds resources under contract to the umbrella plan may still enroll only if, the vessel owner or operator maintains a contract with another primary response contractor that will provide supplemental response resources, and if those resources are sufficient to meet the requirements of this chapter. The vessel owner or operator must provide documentation that authorizes the umbrella plan holder to activate the supplemental response resources, sufficient to meet the worst case discharge of the covered vessel, during a drill, spill or substantial threat of a spill. Documentation must demonstrate the agreement and includes, but is not limited to, authorized representative and commitment letters from contractors, qualified individuals, insurance representatives, member signed enrollment agreements or other letters of intent.

(2) The plan must describe the process for activation of the supplemental resources and shall include the documentation described in subsection (1) of this section. The process for accessing supplemental equipment will be tested in drills.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-240 Field document.** (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that vessel umbrella plan holders shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

Umbrella vessel plans shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

- (a) A list of the procedures to detect, assess and document the presence and size of a spill;
- (b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260 and 173-182-262 or 173-182-264 as applicable; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

#### NEW SECTION

**WAC 173-182-242 Additional requirements for vessel plan holders with access to the emergency response system at Neah Bay.** (1) Covered vessels that transit to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, on Vancouver Island, Canada, must include the following information in their contingency plan:

(a) Documentation of the vessel owner/operators contracted access to an emergency response towing vessel (ERTV) at Neah Bay;

(b) Detailed information about the ERTV's capabilities and circumstances of potential activation and call out;

(c) A commitment in the plan to participate in drills that test compliance with the requirements of RCW 88.46.135; and

(d) Procedures for call out of the ERTV must be included in the field document.

(2) Plan holders may request drill credit for an actual deployment of the tug to respond to a spill or vessel emergency, provided the plan holder follows the requirements in WAC 173-182-730.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-260 Notification and call-out procedures.** (1) Each plan shall include procedures which will be taken to immediately notify appropriate parties that a spill has occurred. The plan shall identify the central reporting office or individuals responsible for implementing the notification process.

(2) Each plan shall include a list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(3) The procedure shall establish a clear order of priority for immediate notification.

~~((4) In addition, facility plans shall also address how notifications will be made to required government agencies for spills to ground or into permeable secondary containment, and threatened or confirmed spills to groundwater.))~~

#### NEW SECTION

**WAC 173-182-262 Vessel notification requirements for a discharge or substantial threat of a discharge.** (1) The owner or operator of a covered vessel must notify the state through the Washington emergency management division of a discharge or substantial threat of a discharge. Notification must be made within one hour of the discharge or substantial threat of a discharge, or as soon as is feasible without further endangering the vessel or personnel.

(2) Vessel discharge notifications are in addition and made subsequent to notifications that the owner or operator of a covered vessel must provide to the United States Coast Guard. Vessels enrolled in umbrella plans must notify the umbrella plan holder in addition to the state.

(3) Notification of the discharge or substantial threat of a discharge initiates activation of the plan. Upon notification:

(a) The vessel owner/operator will coordinate as appropriate with the state of Washington and the United States Coast Guard to take any necessary actions to protect the public health, welfare, and natural resources of the state; and

(b) The umbrella plan holder for plan implementation as described in the plan.

(4) Notification procedures must be included in the plan.

(5) The substantial threat of a discharge may be determined or affected by the following conditions:

(a) Ship location and proximity to land or other navigational hazards;

(b) Weather;

(c) Tidal currents;

(d) Sea state;

(e) Traffic density;

(f) Condition of vessel; and

(g) Timing or likelihood of vessel repairs.

#### NEW SECTION

**WAC 173-182-264 Notification requirements for facility spills to ground or containment that threaten waters of the state.** (1) Facility plans shall contain procedures for notifications for spills to ground and to permeable secondary containment that threaten to impact waters of the state. All spills are considered reportable spills except spills which are known to be less than forty-two gallons. A spill is considered to have not impacted ground if it occurs on a paved surface such as asphalt or concrete.

(2) Plan holders must also include procedures in their plan to address spills of an unknown volume. When addressing a spill of an unknown volume, plan holders may consider the following circumstances in determining when to make notifications:

(a) Whether the spill is ongoing; and

(b) Whether the spill is located in an area that is adjacent to waters of the state or where there is a pathway to waters of the state, and the environmental conditions, such as rain events, or known shallow groundwater make impacts to waters of the state likely.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-280 Spill management teams.** (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one

alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, this list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.

(c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) Covered vessel plan holders shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include estimated time frames for arrival of the remainder of the spill management team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) Covered vessel umbrella plans must maintain a list of the spill management team(s) for each vessel enrolled under the plan, and must describe the transition process from umbrella plan personnel to the incoming vessel owner or operator's team. The plan must include checklists and documentation to facilitate an effective transition.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-315 Facility planning standards for nondedicated work boats and operators.** Each facility plan holder shall plan to obtain nondedicated work boats and operators that will be available to deploy GRPs, enhance skimming, to provide platforms as vessel of opportunity skimming systems, logistical support or other uses during a spill. At a minimum, the plan shall describe a plan that will support the worst case spill response with work boats and operators

that could have arrived on scene beginning at forty-eight hours.

#### NEW SECTION

**WAC 173-182-317 Covered vessel planning standards for vessels of opportunity (VOO).** (1) This section applies to owners and operators of covered vessels and covered vessel plan holders who are required to have a plan for the use of VOO. In order to enhance the ability to respond to spills using nondedicated resources, Washington state approved PRCs cannot be identified in the plan as VOO. The VOO may be used in the following ways:

(a) Protecting of sensitive habitats through the placement of oil spill booms;

(b) On-water oil recovery in the nearshore environment;

(c) Providing logistical spill response support; or

(d) Supporting other tactical actions.

(2) In order for a commercial vessel to be considered for the VOO program, the owner or operator will self-register through the on-line process developed by ecology, or through use of a form provided by ecology. VOO operators must renew their information annually, and will supply the following information as applicable to the vessel:

(a) Name of vessel;

(b) Length of vessel;

(c) Year, make, and model of the vessel;

(d) Vessel engine type(s) and horsepower;

(e) Number of passengers certified to carry;

(f) Number of cabins/berths;

(g) The vessel's Lloyds Registry and/or International Maritime Organization (LR/IMO) number or official number;

(h) Vessel operator contact information;

(i) Vessel crew training records relevant to oil spill response;

(j) Date of the most recent marine survey;

(k) Date of the most recent USCG compliance inspection or boarding;

(l) Date of expiration of USCG Certificate of Compliance or Certificate of Inspection, or Fishing Vessel Safety Examination Decal.

(m) Vessel P&I club affiliation;

(n) Vessel homeport and vessel hailing port;

(o) Residence(s) of vessel owner and crew;

(p) Tactics vessel would like to support;

(q) Seasonal operations of the vessel;

(r) Drug testing program for captain and crew; and

(s) Plan holder or PRC with which the vessel is contracted.

(3) In order for a recreational vessel to be considered for the VOO program the owner or operator will self-register through the on-line process developed by ecology, or through use of a form provided by ecology. VOO operators must renew their information annually, and will supply at a minimum the following information to the extent applicable to the vessel:

(a) Name of vessel;

(b) Length of vessel;

(c) Year, make, and model of the vessel;

(d) Vessel engine type(s) and horsepower;

(e) Number of cabins/berths;

(f) The state registration number and/or USCG documentation number or other official number;

(g) Vessel owner contact information;

(h) Vessel owner training relevant to oil spill response;

(i) Date of the most recent marine survey;

(j) Date of the most recent USCG Auxiliary Docksides Courtesy Inspection;

(k) Vessel insurance information and coverage plan;

(l) Vessel homeport and vessel hailing port;

(m) Tactics vessel would like to support;

(n) Residence of vessel owner; and

(o) Plan holder or PRC with which the vessel is contracted.

(4) For planning purposes VOO will be organized by regions. The regions are designed to ensure adequate numbers of VOO for contracting. Covered vessel plan holders shall have contracted access to VOO in the regions they transit or operate. VOO from all regions may be cascaded into the spill area if the VOO capability is appropriate for the operating environment. The regional areas include:

(a) Region 1: Cape Flattery/Strait of Juan de Fuca.

(b) Region 2: San Juan Islands/North Puget Sound.

(c) Region 3: South Puget Sound/Central Puget Sound.

(d) Region 4: Lower Columbia River.

(e) Region 5: Admiralty Inlet/Hood Canal and North Central

Puget Sound.

(f) Region 6: Grays Harbor.

# Vessel of Opportunity Regions



**NOTE: In the event of a spill VOOs from any region may be called to the site to assist with the response.**

Legend	
Region	
	1- Strait of Juan de Fuca
	2- San Juan Islands/ North Puget Sound
	3- South Puget Sound and Central Puget Sound
	4-Lower Columbia River
	5- Admiralty Inlet/Hood Canal and North Central Puget Sound
	6- Grays Harbor

Region	Minimum Number of Tier 1 Vessels
1	18
2	12
3	12
4	12
5	12
6	12

Map Created by WA Department of Ecology, Spill Preparedness Section, 6/28/2012

(5) For each region a vessel plan holder transits or operates the plan holder must have a contract with the prescribed number of Tier I VOO below. VOO are nondedicated resources; the minimum number of VOO required assumes that one out of every two contracted vessels may be available at any time. In each region a percentage of the VOO must be

pretrained and capable of the following tactics: On-water recovery, protection of sensitive areas, and logistical support with no more than fifty percent to be pretrained exclusively for logistical support.

(a) Region 1: Plan holders must have contracts with a minimum of eighteen VOO at the Tier I level.

(b) Region 2: Plan holders must have contracts with a minimum of twelve VOO at the Tier I level.

(c) Region 3: Plan holders must have contracts with a minimum of twelve VOO at the Tier I level.

(d) Region 4: Plan holders must have contracts with a minimum of twelve VOO at the Tier I level.

(e) Region 5: Plan holders must have contracts with a minimum of twelve VOO at the Tier I level.

(f) Region 6: Plan holders must have contracts with a minimum of twelve VOO at the Tier I level.

(6) Plan holder obligations, as identified within this section, are subject to an adequate number of suitable and capable vessels enrolling with ecology. Plan holders may propose for review and approval an alternative planning standard for a VOO region if, after a good faith effort to contract with the minimum numbers of VOO, the plan holder is not successful. The alternative proposal must provide an equivalent or higher level of protection in terms of spill preparedness and response when compared with the planning standard. This proposal will be subject to a thirty-day public review and comment period, which includes, but is not limited to, interested local and tribal governments and other stakeholders. The alternative proposal must include:

(a) Documentation that there are insufficient numbers of VOO registered.

(b) Documentation describing the selection criteria and a description of how the Tier II enrolled vessels do not meet the criteria.

(c) A detailed description of the alternative being proposed.

(7) Vessels of opportunity will be designated in one of the following two tiers:

(a) Requirements for Tier I designated vessels include:

(i) Under contract with the plan holder.

(ii) Pretrained through a combination of classroom training, computer based education, equipment familiarization, and field training exercises appropriate to the tactics the vessel may be assigned, including:

(A) HAZWOPER training must be appropriate to the tactics the vessel may be assigned as set forth in Title 29 of Code of Federal Regulations (C.F.R.) 1910.120;

(B) Basic incident command system training;

(C) Participation annually in at least one on-water training for the tactics for which the VOO is contracted;

(D) Participate in at least one on-water deployment drill every three years.

(iii) The department shall be invited to attend all VOO training events.

(iv) Training records must be maintained for a period of five years. Training records shall be made available to the department upon request.

(v) The vessel should agree under contract to make best efforts, if available, to mobilize within twelve hours of call out with crew as trained per this section.

(b) Tier II designated vessels include: Commercial and recreational vessels that self-identify their interest in participation in the VOO program but are not under contract to a plan holder. Vessel plan holders shall describe in their contingency plan the process for rapidly training and contracting the Tier II vessels for at least logistical support tactics.

(8) VOO drill requirements:

(a) Plan holders shall incorporate Tier I VOO into deployment drills and tabletop drills.

(b) Tabletop drills may incorporate simulated call out of vessels of opportunity by identifying the vessel and crew available to respond on the day of the drill. Data collected during the simulated call out shall include vessel name, crew names, estimated time of arrival on scene, availability on the day of the spill and the ability to support the response over days or weeks, and the task force or staging assignment of the vessel of opportunity.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-320 Facility planning standards for aerial surveillance.** Each facility plan shall provide for aerial oil tracking resources capable of being on-scene within six hours of spill (~~(awareness)~~) notification. At a minimum, these resources must be capable of supporting oil spill removal operations for three, ten-hour operational periods during the initial seventy-two hours of the discharge.

NEW SECTION

**WAC 173-182-321 Covered vessel planning standards for aerial surveillance.** Covered vessels shall document the following aerial surveillance capability through the plan:

(1) Access to a helicopter or fixed wing, under contract or other approved means, that is appropriately located and could have arrived with a trained aerial oil spill spotter (spotter) to those planning standard areas plan holders operate or transit within six hours of spill notification. The contracted asset must have the following capability:

(a) Be capable of supporting oil spill containment and removal operations by providing oil spotting capability for at least ten hours per day during the initial seventy-two hours of an oil discharge.

(b) Have a trained spotter on board the aerial asset capable of acquiring, interpreting, recording and communicating oil location and other information to the command post or field operations at regular intervals. The spotter must be equipped with a high definition photographic or video capability and be able to collect and disseminate the following data about the environmental and operational picture including the location of the oil, environmental impacts, and spill resources on-scene:

(i) Latitude and longitude of the location, impacts, or spill resources;

(ii) Azimuth and altitude that the picture was taken;

(iii) Bearing that the picture was taken;

(iv) Estimated extent of oiling; and

(v) Time and date.

(2) Plans must also include logistical sources of additional resources not under contract that may be utilized as additional spotting resources to maximize the effectiveness of enhanced skimming, or as resources to identify the extent of oil to inform shoreline clean-up and assessment teams and shoreline clean-up activities.

(3) In order to provide best achievable technology for aerial oil surveillance, vessel plan holders must also provide for access to a helicopter or fixed wing asset, under contract or other approved means, with the capability to provide a strategic picture of the overall spill; assist in detection of slicks when they are not visible by persons operating at, or near, the water's surface or at night; extend the hours of clean-up operations to include darkness and poor visibility; identify oceanographic and geographic features toward which oil may migrate.

(a) The aerial asset must be appropriately located and could have arrived with trained aerial observers to those planning standard areas plan holders operate or transit within eight hours of spill notification.

(b) The aerial asset must be equipped with a suite of equipment that could support the capabilities described in this subsection. At least two remote sensing systems must be included in the suite and one of them must be a high definition infrared (IR) camera designed to support aerial operations from aerial platforms which at a minimum meets the following capabilities:

(i) IR camera with sensors capable in either or both of the following ranges 3 to 5  $\mu\text{m}$  or 8 to 14  $\mu\text{m}$ ;

(ii) 640 x 480 focal pixel detector;

(iii) Continuous optical zoom of 18x;

(iv) Minimum thermal resolution .07; and

(v) Plan holders must submit for approval the systems included in the suite. Plan holders may submit testing data for suites of equipment with alternative capabilities.

(c) The trained oil spill aerial observer on board could begin gathering the following from the scene of the spill once on-site:

(i) Graphically displaying processed multispectral data (at a minimum displaying the IR and optical windows), photographic images and other information onto electronic marine charts creating high contrast composite images;

(ii) Ability to reference a map image to a geographic location;

(iii) Location extent and relative thickness information for a reported oil sheen or slick;

(iv) Transmitting processed images and other information to the unified command primary command post in near real time; and

(v) Archiving all processed data and images; and

(vi) Integrating spill images and other information with appropriate spill management software.

(4) Plan holders must have access to enough personnel trained in aerial surveillance and as spotters to direct skimmers into the thickest oil to enhance on-water recovery and to support the activities described above. The names of individuals with this training, their home base and training levels must either be listed in the plan or made available to ecology upon request. At a minimum, personnel must be trained in aerial observation at the level set forth in federal regulations currently located at 33 C.F.R. 155.1050 (1)(2)(iii). A copy of this regulation is available through ecology upon request.

#### NEW SECTION

**WAC 173-182-324 Planning standards for Group 5 Oils.** (1) Plan holders carrying Group 5 Oils must have a contract with a PRC that maintains the resources and/or capabilities necessary to respond to a spill of Group 5 Oils. Such equipment shall include, but is not limited to, the following:

(a) Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;

(b) Containment boom, sorbent boom, silt curtains, or other methods for containing the petroleum oil that may remain floating on the surface or to reduce spreading on the bottom;

(c) Dredges, pumps, or other equipment necessary to recover petroleum oil from the bottom and shoreline;

(d) Equipment necessary to assess the impact of such discharges; and

(e) Other appropriate equipment necessary to respond to a discharge involving the type of petroleum oil handled, stored, or transported.

(2) The equipment must be suitable for the geographic area authorized for operations and these resources must be capable of being on scene within twelve hours of spill notification.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-325 Planning standards for dispersants.** (1) Plan holders with vessels carrying Group ((H)) 2 or ((H)) 3 persistent oil as a primary cargo that transit in any area where preapproval or case-by-case use of dispersants is available as per the NWACP, must plan for the use of dispersants.

(2) The plan holder must identify the locations of dispersant stockpiles, and dispersant type, capable of dispersing the lesser of five percent of the worst case spill volume or twelve thousand barrels per day, using a dispersant to oil ratio of one to twenty.

(3) The plan holder must describe the methods of transporting equipment and supplies to a staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness.

(4) The plan holder must describe operational support capability, including the platforms and spotters used to deploy dispersants, monitor the operational efficacy of the dispersant application to support operational decision making, and ensure safety of response personnel.

(5) These resources must be capable of being on scene within twelve hours of spill (~~(awareness)~~) notification.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-330 Planning standards for in situ burning.** (1) Based on the NWACP, plan holders operating in areas where in situ burning has an expedited approval process must plan for the use of in situ burning.

(2) The plan holder must identify the locations of two fire booms, air monitoring equipment, igniters and aircraft or vessels to be used to deploy the igniters.

(3) The fire booms must be five hundred feet in length each and have an additional one thousand feet of conventional boom, tow bridles and work boats capable of towing the boom for burning operations.

(4) The plan holder must describe the methods of transporting the equipment to a staging area, and appropriate aircraft or vessels to monitor its effectiveness at the scene of an oil discharge.

(5) These resources must be capable of being on scene within twelve hours of spill ((~~awareness~~) notification).

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-335 Planning standards for storage.**

Plan holders shall identify both on-water devices and shore-side interim storage locations. For marine waters, shoreside storage can be identified to meet fifty percent of storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage. For freshwater environments, shoreside storage can be identified to meet sixty-five percent of the storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage. For covered vessels at least twenty-five percent of the total worst case discharge on-water storage requirement must be staged and dedicated to oil spill response.

NEW SECTION

**WAC 173-182-349 Covered vessel plan holders technical manuals.** (1) Each covered vessel plan holder that operates or transits in the Neah Bay, Cathlamet, or San Juan Islands planning standard areas must provide a technical manual that includes all of the equipment appropriate for the operating environment that is necessary to meet the recovery and storage requirements, through the forty-eight hour time frames.

(2) The technical manuals will be used to inform the five year BAP cycle and support ecology's determination that the response systems, training levels, and staffing demonstrate best available protection.

(3) Plan holders must use a systems approach to identify the equipment, including WRRL identification or other unique identification numbers, that will be used to describe the response systems in the technical manual. For each recovery system described include the following:

(a) An operational picture or diagram of the recovery system, the EDRC for the system, and associated temporary storage;

(b) The infrastructure and support resources necessary for deployment;

(c) Associated vessels necessary to enhance the skimmer;

(d) At least three hundred feet of boom to enhance the skimmer or an alternative based on manufacturers recommendations;

(e) The mobilization time and home base for the equipment;

(f) The ownership or mechanism for accessing the equipment for example, under contract, subcontract or letter of intent to the plan holder or other approved means;

(g) If applicable, the ability of the recovery system to be used to support night operations;

(h) The minimum number of personnel necessary to deploy the equipment for a twelve hour shift and the training level of personnel appropriate to operate the equipment and carry out recovery;

(i) If alternative speeds are given for equipment associated with a recovery system the information should be included in the equipment description; and

(j) The product type(s) the associated skimmer is optimized for.

(5) For the storage requirement include the following:

(a) An operational picture or diagram and capacity of the storage system;

(b) The infrastructure and support resources necessary for deployment;

(c) The mobilization time and home base for the equipment;

(d) The ownership or mechanism for accessing the equipment for example under contract, subcontract or letter of intent to the planholder or other approved means;

(e) The minimum number of personnel necessary to deploy the equipment for a twelve hour shift and the training level of personnel appropriate to operate the equipment;

(f) If applicable the ability of the storage system to be used to support night operations;

(g) If alternative speeds are given for equipment associated with the storage device the information should be included in the equipment description.

(6) The technical manual is a standalone planning standard and is not intended to be used to demonstrate compliance with any other planning standards. Technical manuals are not intended to bind the use of any specific tactics during a drill or spill or to imply a guarantee of what will occur in a real spill event.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-350 Documenting compliance with the planning standards.** The plan holder shall describe how the planning standards found in this chapter are met.

(1) Each plan shall provide a spreadsheet on the resources intended to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel by type, quantity, home base and provider.

(2) Ecology will analyze the planning standard spreadsheet provided to determine whether the plan holder has access to equipment and personnel necessary to meet the planning standards.

(3) For purposes of determining plan adequacy, plan holders will include time for notification and mobilization of

equipment and personnel. The time needed for a resource to move to the spill site is the sum of the notification, mobilization, and travel times. For dedicated resources owned by the plan holder, the mobilization planning factor to be used by the plan holder, PRC and ecology is thirty minutes. For all other dedicated response equipment the mobilization planning factor is one hour. Nondedicated resources shall have a mobilization planning factor of three hours or the time specified in the letter of intent, mutual aid agreement or contract.

(4) Equipment travel speeds shall be computed using a speed of thirty-five miles per hour for land and five knots for water. Ecology ~~((will))~~ may use geographic information systems (GIS), standard nautical charts ((and)), street maps and available on-line mapping programs to determine the length of time it will take equipment to cover a given distance.

(5) Plan holders may request approval for alternative notification, mobilization, and travel time by providing documentation to justify the request, such as actual performance during spills or unannounced drills.

(a) The request shall include date and time of performance or test, weather/sea state conditions and transportation information.

(b) If ecology accepts these alternative response times, then these response times will be tested in unannounced drills or spills to verify alternative calculations.

(c) If ecology grants plan holder or PRC owned response equipment an alternative mobilization, transit speed, recovery or storage volume, through the plan review process, and the alternative is not demonstrated to the satisfaction of the department during a drill or spill, it may result in disapproving the alternative.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-370 San Juan County planning standard.** Those covered vessel and facility plan holders that transit or operate within San Juan County must meet this standard. The resources to meet the two and three hour standards must be resident.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage in Barrels</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
4	<u>At least an additional 200 feet of boom and temporary storage of at least 196 bbls with the ability to collect, contain, and separate collected oil from water could have arrived. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment</u>		
6	Additional 10,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-375 Padilla Bay planning standard.** Those covered vessel and facility plan holders that transit or operate north of State Highway 20, east of a line drawn from Shannon Point on Fidalgo Island to Kelly's Point on Guemes Island, south of a line drawn from Clark Point on Guemes Island and William Point on Sammish Island must meet the following standards. Some of the GRPs may be deployed by land.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage in Barrels</b>
1.5	A safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
2	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments((-)). Depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived on scene. At least 20% of the skimming capability must be able to work in shallow water environments ((-)). Depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-380 Commencement Bay(---)Quartermaster Harbor planning standard.** Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°19'29"N Long. 122°27'23"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
1.5	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
2	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
4	<u>At least an additional 200 feet of boom and temporary storage of at least 196 bbls with the ability to collect, contain, and separate collected oil from water could have arrived. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment</u>		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-395 Neah Bay staging area.** Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°23'06"N Long. 124°35'59"W (WGS 1984) must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs. The boom and recovery resources to meet the two, three and six hour standards must be resident.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times the length of the largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived		
4	<u>At least an additional 200 feet of boom and temporary storage of at least 196 bbls with the ability to collect, contain, and separate collected oil from water could have arrived. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment</u>		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
6	Additional 6,000 feet of boom with at least 4,000 feet of open water boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC
12	Additional 20,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

**AMENDATORY SECTION** (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-405 Grays Harbor planning standard.** Those covered vessel and facility plan holders that transit or operate within Washington waters in a five nautical mile radius of a point at Lat. 46°54'52.25"N Long. 124°10'26.45"W (WGS 1984) outside the entrance to Grays Harbor must meet these standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom or 4 times the length of the largest vessel of boom to be used for containment, protection or recovery could have arrived on scene		
4	<u>At least an additional 200 feet of boom and temporary storage of at least 196 bbls with the ability to collect, contain, and separate collected oil from water could have arrived. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment</u>		
6	Additional 6,000 feet of boom with at least 2,000 feet of open water boom and 3,000 feet of calm water - Current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 25% must be able to work in shallow water environments - Depth of 10 feet or less	1 times the EDRC

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
12	Additional 20,000 feet of boom with at least 1,000 feet of calm water - Current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - Depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-410 Willapa planning standard.** Those covered vessel and facility plan holders that transit or operate within Washington waters in a five nautical mile radius of a point at Lat. ((46°44'00"N Long. 124°11'00"W)) 46°41'31.2"N Long. 124°5'41.99"W (WGS 1984) outside the entrance to Willapa Bay must meet these standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of boom with at least 6,000 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - Depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - Depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-415 Cathlamet staging area.** Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 36 and statute mile 42 must meet the following standards. The resources to meet the two and three must be resident

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
4	<u>At least an additional 200 feet of boom and temporary storage of at least 196 bbls with the ability to collect, contain, and separate collected oil from water could have arrived. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment</u>		
6	Additional 7,000 feet of boom with at least 4,200 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of boom with at least 5,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less and 25% must be open water capable	1.5 times the EDRC
24	Additional 20,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived. At least 25% must be open water capable	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-450 Planning standards for the Washington coast.** These standards apply to covered vessels that enter Washington waters at the Columbia River, Grays Harbor or the Strait of Juan de Fuca, and offshore facilities.

Plan holders shall be capable of sustaining a worst case spill response and shall develop an addendum specific to Washington's coast, including:

- (1) The capability, if applicable, for in situ burning, dispersant, and mechanical recovery;

(2) Surveillance equipment (including fixed wing, helicopters and low visibility equipment) to provide for aerial assessment of spill within six hours of spill (~~awareness~~) notification;

(3) Time frames and mechanisms to cascade in equipment and other resources for up to seventy-two hours;

(4) Ten thousand feet of boom appropriate for shoreline protection, containment and/or ten thousand feet of open water boom for enhanced skimming, containment or other use to arrive within twelve hours; and

(5) Twenty thousand feet of boom appropriate for containment, protection or recovery to arrive within twenty-four hours.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-520 Facility planning standards for shoreline cleanup.** Each facility plan holder shall identify and ensure the availability of response resources necessary to perform shoreline cleanup operations. This standard will be evaluated using the criteria found in 33 C.F.R. Part 155 Appendix B and 33 C.F.R. 154 Appendix C.

#### NEW SECTION

**WAC 173-182-522 Covered vessel planning standards for shoreline cleanup.** (1) Each contingency plan shall include procedures for identifying shoreline types that could be impacted by an oil spill and procedures to determine appropriate response tactics for the potentially impacted shorelines during spills. The plan should describe contracted access to shoreline clean-up workers and shoreline clean-up equipment to ensure the following capability can plan to arrive within twenty-four hours of spill notification:

(a) Plan holders must have contracted access to one hundred trained shoreline clean-up workers. The shoreline clean-up workers must have appropriate safety and Hazwoper training and will not be counted towards other planning standards. The training should ensure clean-up workers can safely perform clean-up actions under the direction of the supervisors and the work assignment as developed by the unified command.

(b) Plan holders must have contracted access to trained shoreline clean-up supervisors. Training for supervisors must include safety, Hazwoper, and relevant ICS courses. For planning purposes a ratio of 1:10 supervisors to clean-up workers should be available under contract to the plan holder. The shoreline clean-up supervisors will not be counted towards other planning standards. Supervisors must understand the ICS process and be able to direct workers consistent with the work assignments as developed by unified command.

(c) Plan holders shall have access to adequate equipment for passive recovery for three miles of shoreline on three tide lines. The plan must identify the staging location(s) of the shoreline clean-up equipment.

(d) The plan holder must have access to a shoreline clean-up trailer that can plan to support eighty to one hundred shoreline clean-up workers with personal protective equip-

ment, hand tools, and other logistical support for three to five days.

(2) Plan holders must describe how data collection, communications, data transmission and data management will be conducted.

(3) The plan shall describe how the plan holder will obtain additional resources necessary to support fourteen additional days of shoreline cleanup. The description should include vendor names, contact information, resources, and approximate time frames for resources to arrive at a staging area.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-540 Planning standards for wildlife rescue and rehabilitation.** The plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on scene within twenty-four hours of spill (~~awareness~~) notification.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-620 Alternative method of evaluating planning standards.** (1) A plan holder may request that ecology review and approve a plan based on alternative planning standards. Such requests should be submitted with the plan and shall be subject to a thirty day public review period and comment period which includes, but is not limited to, interested local and tribal governments and other stakeholders.

(2) The proposal must include, at a minimum:

(a) A reference to which planning standard(s) in this chapter the proposal will be substituted for;

(b) A detailed description of the alternative proposal including equipment, personnel, response procedures, and maintenance systems that are being proposed; and

(c) An analysis of how the proposal offers equal or greater protection or prevention measures as compared to the requirement in this chapter.

(3) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate; and

(b) The alternative compliance proposal provides an equivalent or higher level of protection in terms of spill preparedness and response when compared with the planning standards found in this chapter.

(4) Ecology may reconsider an approval at any time, in response to lessons learned from spills, drills, and significant plan changes which indicated that the requirements of this section for approval are not met.

#### NEW SECTION

**WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle.** (1) Ecology will review the planning standards at five-year intervals to

ensure the maintenance of best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety.

(2) Ecology will adopt a five-year review cycle to ensure that the planning standards are updated to include proven new response technologies and response processes. In addition plan holders and other interested parties will be provided an opportunity to present information and proposals regarding spill prevention credits to support an alternative worst case discharge volume for the contingency plan. The review cycle is designed to evaluate BAP by assessing contributing elements including:

- (a) Best achievable technology;
- (b) Staffing levels;
- (c) Training procedures; and
- (d) Operational methods.

(3) The review cycle will be used to evaluate a variety of spill operations, tools, and technologies including, but not limited to, the following:

- (a) Advancing systems for the removal of oil from the surface of the water;
- (b) Improving the performance of existing skimmer/boom and storage systems technology;
- (c) Improving the performance of in situ burn and dispersants technology;
- (d) Broadening the environmental conditions under which oil spill cleanup can take place;
- (e) Ensuring that the technology is deployable and effective in a real world spill environment; and
- (f) Considering tools or technology that are designed, produced, and manufactured in an energy-efficient process and products are reuseable, recyclable, and reduce waste.

(4) Ecology may use the following processes to inform and update the use of BAP in the planning standards by:

- (a) Convening an advisory committee(s) to assist ecology during the five-year review cycle and promote BAP.
- (b) Evaluating the recovery systems identified in the technical manual during the five-year cycle to determine best achievable technology, and inform the development of future planning standards.
- (c) Sponsoring a technology conference during the five-year cycle in cooperation with persons, organizations, and groups with interests and expertise in relevant technologies; or
- (d) Conducting, reviewing or requiring studies, inquiries, surveys, or analyses appropriate to the consideration of new technologies, plan evaluation methods including EDRC, or best operational practices.

(5) Ecology may prepare reports following either of the actions described in subsection (4) of this section. These reports will identify the new technologies, processes, techniques or operational practices that ecology considers to represent BAP.

(6) Ecology will provide an opportunity for a thirty-day public review and comment period on the draft report.

(7) Ecology will use the developed reports to update the contingency planning rule as necessary every five years.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-630 Process for plan approval.** (1)

Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan ~~((is))~~ has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan((s)) available for public review~~((Comments will be accepted during the first thirty calendar days of the review period.~~

~~(3))~~ and comment.

Ecology will accept comments on the plan no later than thirty days after the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination that the plan is disapproved, approved, or conditionally approved. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the plan holder receives a certificate ((describing the terms)) of plan approval((-including)) and plan expiration dates. Approved plans shall be valid for five years.

~~((a))~~ (b) If a plan is conditionally approved, ecology may ((approve a plan conditionally and)) require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. ((Such notice will include specific reference)) In the conditional approval ecology will describe:

(i) Each specific restriction and the duration for which they apply;

(ii) Each required item to bring the plan into compliance; and

(iii) The schedule for plan holders to submit required updates, including a reference to the regulatory standard in question.

~~((i) Precautionary measures))~~ (iv) Restrictions may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. ((Precautionary measures)) Restrictions may also include additional requirements to ensure availability of response equipment.

~~((ii))~~ (v) Conditional approval expires no later than eighteen months from date of issue before the plan holder must request an extension which is subject to public review.

(vi) Ecology shall revoke its conditional approval prior to the expiration date of a plan holder((s)) who fails to meet the terms of the conditional ((requirements or provide required changes in the time allowed will forfeit conditional approval status)) approval. The revocation will be in the form of an appealable order.

~~((b))~~ (c) If plan approval is ((denied)) disapproved, the plan holder shall receive an explanation of the factors ((for denial and a list of actions necessary to gain approval)).

(3) The owner or operator or plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved or conditionally approved plan. Umbrella plan

holders shall not enroll any vessels in a plan that has not been approved or conditionally approved, by ecology.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(5) Public notice will be given of any plan approval, conditional approval, or disapproval of a plan.

**NEW SECTION**

**WAC 173-182-640 Process for public notice and opportunity for public review and comment period.** (1)

The purpose of this section is to specify the procedures for notifying the public which includes interested local and tribal governments about contingency plan status and decisions in order to provide opportunities for the public to review and comment. If plan holders submit only paper copies of their contingency plan, the paper copies may be scanned to ensure public review can occur via a secure on-line web portal. Interested public, local, and tribal governments can also schedule time at the ecology offices to review the plan.

(2) In order to receive notification of the public review and comment period, interested public, local, and tribal governments must sign up on a listserv. Ecology's web site will also be used to post notice of public review and comment periods.

(3) Public comment periods must extend at least thirty days. Public notice, review, and comment periods are required in the following circumstances:

- (a) Plan submittals for facilities or vessels that have never submitted a plan in Washington;
- (b) Plan updates required by WAC 173-182-130;
- (c) The submittal of plans for five-year review as required by WAC 173-182-120;
- (d) Requests for an alternative planning standard in accordance with WAC 173-182-620;
- (e) Plan holder requests for drill requirement waivers in accordance with WAC 173-182-740; and
- (f) PRC applications submitted under WAC 173-182-810.

(4) Public notice, review, and comment period are not required in the following circumstances:

(a) Routine updates to names, phone numbers, formatting, or forms that do not change the approved content of the plan;

(b) Plan updates to resubmit the binding agreement based on changes to the binding agreement signer; and

(c) Annual plan reviews that result in a letter to ecology confirming that the existing plan is still accurate.

**AMENDATORY SECTION** (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-700 Drill participation, scheduling and evaluation.** (1) Plan holders and primary response contractors (PRCs) shall participate in a drill and equipment verification program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Drill Program (PREP), is relied on to test each component of the plan.

(2) Plan holders and PRCs shall ensure ecology (~~shall be~~) is provided an opportunity to help design and evaluate all tabletop and deployment drills for which the plan holder desires drill credit. To ensure this, plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table below.

(3) Ecology shall mail a written drill evaluation report for drills to the plan holder following each deployment and tabletop drill. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Where plan deficiencies have been identified in the written evaluation (~~may require~~), plan holders may be required to make specific amendments to the plan or conduct additional trainings to address the deficiencies.

(6) A plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

**AMENDATORY SECTION** (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-710 Type and frequency of drills.** The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - <u>One</u> in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - <u>Done</u> two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance. <u>Except the tank vessel multiplan holder deployment drill which must be scheduled at least 60 days in advance.</u>

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
<u>ERTV Deployment Drill for covered vessels transiting the Strait of Juan de Fuca</u>	<u>1 - One in each three year cycle, this is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.</u>	<u>This drill may involve notifications and tug call out, communications safety, tug demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel and holding position within one hundred feet of another vessel.</u>	<u>Scheduled at least 30 days in advance.</u>
<u>Wildlife Deployment Drill</u>	<u>1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill.</u>	<u>This drill will be a deployment of wildlife equipment and wildlife handlers.</u>	<u>Scheduled at least 30 days in advance.</u>
<u>Tank vessel multiplan holder deployment drill</u>	<u>1 - One in each three year cycle.</u>	<u>This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, and the verification of operational readiness over multiple operational periods.</u>	<u>Scheduled at least 60 days in advance.</u>

(1) Tabletop drills:

(a) Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the incident command system (ICS). Role playing shall be required in this drill. During all required tabletop drills plan holders must provide a master list of equipment and personnel identified to fill both command post and field operations roles. The master resources list must include:

(b) Western regional response list identification numbers for all response actions, including shoreline cleanup and other response tactics; and

(c) Personnel names, affiliation, home base and command post or field role.

(2) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill (~~, except that,~~). However, at ecology's discretion, (~~away~~) team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every (~~five~~) six years.

~~((2))~~ (3) Umbrella plan holders and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230 (6)(a) in tabletop and deployment drills as a best practice to demonstrate the preparedness of enrolled vessel members.

These drills will be scheduled by the plan holder or unannounced to be conducted by ecology, at the discretion of ecology. These drills may test any plan components but at a minimum will include notification to the enrolled vessel qualified individual, coordination of supplemental resources under WAC 173-182-232 and the transition from the umbrella plan spill management team to the enrolled vessel company spill management team.

(4) Equipment deployment drills: Plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of plan holder owned (~~and~~) assets, contracted PRC assets, nondedicated assets, and vessels of opportunity.

(b) Plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a geographic response plan (GRP) strategy identified within the plan. If no GRPs exist for the operating area,

plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the prebooming of an oil transfer provided the transfer is scheduled as a deployment on the drill calendar. Such credit may only be requested once per triennial cycle.

~~((3))~~ (5) Plan holders may receive credit for ((GRP)) deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

~~((4))~~ (6) Additional large-scale multiple tank vessel plan holder equipment deployment drill requirement. Once every three years all tank vessel plan holders, including vessel umbrella plan holders that enroll tank vessels, must participate in a multiple plan holder deployment exercise. At least one plan holder shall be the drill planning lead, participate in all the planning meetings and observe the drill. This deployment may include the following objectives:

(a) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;

(b) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;

(c) Demonstration of multiple simultaneous tactics including:

(i) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;

(ii) Protection task forces which deploy multiple GRPs;

(iii) Vessel and personnel decontamination and disposal;

(iv) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations; and

(v) Personnel and equipment identified for night operations.

(d) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

(7) Additional deployment requirement for vessel plan holders with contracted access to the ERTV. Once every three years plan holders with contracted access to the ERTV must cosponsor a drill that includes deployment of the ERTV, unless ERTV drill credit has already been received under WAC 173-182-242 (1)(e). This drill must be scheduled on the area exercise calendar. The drill shall include at a minimum:

(a) Notifications and tug call out;

(b) Safety and environmental assessment;

(c) Demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel;

(d) Demonstration of the capability to hold position within one hundred feet of another vessel; and

(e) Communications.

(8) Additional deployment requirement for all plan holders. Once every three years plan holders must deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan. This is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.

(9) For all plan holders, ecology (~~(initiated)~~) may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-720 Evaluation criteria.** The ~~((PREP))~~ ecology drill evaluation process is based on the National Preparedness for Response Exercise Program (NPREP) guidance document. The NPREP guidance document lists fifteen core components that shall be demonstrated by the plan holder during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate plan holder tabletop and deployment drills. The core components are as follows:

(1) Notifications: Test the notifications procedures identified in the plan.

(2) Staff mobilization: Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) Ability to operate within the response management system described in the plan. This includes demonstration of the ICS staffing and process identified in the plan.

(4) Source control: Demonstrate the ability of the spill response organization to control and stop the discharge at the source.

(5) Assessment: Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge and provide continuing assessments of the effectiveness of the tactical operations.

(6) Containment: Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) Recovery: Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product. Includes mitigation and removal activi-

ties, e.g., dispersant use, in situ burn use, and bioremediation use.

(8) Protection: Demonstrate the ability of the spill response organization to protect the environmentally and economically sensitive areas identified in the NWACP and the plan.

(9) Disposal: Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) Communications: Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) Transportation: Demonstrate the ability to provide effective multimode. Transportation both for execution of the discharge and support functions.

(12) Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

(14) Procurement: Demonstrate the ability to establish an effective procurement system.

(15) Documentation: Demonstrate the ability of the plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-740 Drill requirement waivers.** (1) Plan holders may request a waiver for a deployment or table-top drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the plan holder is meeting the purpose and intent of the drill program with the waiver.

(3) Plan holder's requests for a drill waiver will be made available for public review and comment, including interested local and tribal governments and other stakeholders, for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the letter.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-800 PRC application.** (1) To become a state-approved PRC, a response contractor must:

(a) Submit an application as set forth in subsection (2) of this section;

(b) Have a process to provide twenty-four hour/day contact for spill response;

(c) Commit to begin mobilization efforts immediately upon notification but no later than one hour from notification of a spill;

(d) Maintain equipment in accordance with manufacturer specifications; ~~(and)~~

(e) Identify and train staff and supervisors expected to be deployed on oil spill response tactics or used to meet the planning standards;

(f) Assist plan holders in meeting the requirements for plans and drills in Washington; and

(g) List response equipment on the western regional response list currently located at [www.wrrl.us](http://www.wrrl.us), or provide an equivalent electronic equipment list and commit to maintaining the equipment list in whatever format is provided.

(2) To apply, a contractor should complete, sign and submit the application form number ECY 070-216.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-810 Content submittal and review of contractor applications.** ~~((4))~~ The PRC application must contain the following information as applicable to the capabilities of the PRC:

(1) A list of primary response contractor personnel indicating whether they are full-time, part-time, or subcontracted including their homebase or office location, and the spill management team roles or tactical roles they may fill in a response.

(a) If personnel are available to the primary response contractor via subcontract a summary of the contract terms for personnel resources should be included in the application. The contract shall be made available to ecology upon request.

(b) A list of all staff training, including training of subcontractors if applicable, and a description of the frequency of essential core training response staff receive.

(c) The training program must include at a minimum:

(i) Safety training;

(ii) Training on-site safety assessment;

(iii) Assessment of environmental conditions;

(iv) Determination that equipment is appropriate for the conditions;

(v) Air monitoring equipment and documentation; and

(vi) Development of a hazard worksheet.

(d) Additional training as necessary for personnel that may be relied upon to perform these tasks:

(i) Conducting site safety briefings;

(ii) Use and deployment of limited visibility tracking devices;

(iii) Utilization and coordination of communications equipment;

(iv) Transfer of a product from skimmer to on-water and shoreside storage;

(v) Containment of a land spill from entering water by channeling, diverting, or berming;

(vi) Fast water river response strategies;

(vii) High current marine response strategies;

(viii) GRP or protection strategy familiarization and deployment;

(ix) Anchoring and setting boom;

(x) Familiarization and deployment of PRC owned oiled-wildlife rehabilitation equipment;

(xi) On water recovery including enhanced skimming;

(xii) Directing field resources;

(xiii) Incident command system training for spill management team roles.

(2) A list of all communication assets by type and location. The frequencies and geographical ranges must be included. This list must be maintained and if not included in the application made available to ecology upon request.

(3) A list of response equipment must be submitted electronically to ecology or via western response resource list, at [www.wrll.us](http://www.wrll.us), containing the following information:

(a) All equipment must be given a unique company identifier, and this identifier must be submitted on the list provided to ecology.

(b) Equipment must include the minimum number of personnel required to operate successfully for one shift.

(c) The location the equipment is stored using latitude/longitude in the WGS 1984 coordinate system. The coordinates must be in decimal degree format.

(d) The type of equipment, including manufacturer's name, manufacture date, model and specifications.

(e) For boom, list the length, manufacturer's name, model, size, and date of manufacture.

(f) For oil recovery devices state the manufacturer's name, model, EDRC or approved alternative, manufacture date, and operating environment.

(g) For temporary storage list the maximum capacity in barrels.

(h) For workboats list the vessel name and/or identifier, length, and vessel type, manufacturer, engine type(s) and horsepower.

(4) A detailed description of the vessel of opportunity program.

(5) A detailed description of other response technologies systems available such as in situ burn, bioremediants, and other chemical agents.

(6) A detailed description of any wildlife rescue and rehabilitation resources. Include a list of contracts or agreements with any trained wildlife rescue and rehabilitation personnel.

(7) A detailed description of equipment and personnel that would be used for shoreline cleanup. This should include a description of training resources for additional clean-up personnel.

(8) A list of agreements for access to shoreside storage. Include the owner, location, and general estimate of volume.

(9) A list of agreements for fixed wing and rotary aircraft used to support spill clean-up operations.

(10) A detailed description of remote sensing equipment and aerial surveillance resources and personnel that the primary response contractor has under contract or letter of intent that could be used to detect and track the extent and movement of oil or direct on-water recovery operations.

(11) Once an application is received, ecology will determine whether it is complete. If not, the response contractor shall be notified of deficiencies in writing and given a time period for submitting the required information.

((2)) (12) Equipment and personnel readiness will be verified once the application is approved. Ecology may inspect equipment, training records, maintenance records, drill records, and may request a test of the call-out procedures, and require operation of each type of equipment listed

in the application. These inspections may be conducted at any/all equipment locations. Any resources not on-site at the time of an inspection shall be accounted for by company records.

((3)) (13) If the application is approved and the verification is satisfactory, the contractor shall receive a letter of approval describing the terms of approval, including expiration dates and EDRC of the recovery equipment. PRC approvals will be reviewed by ecology every three years. Applications shall be resubmitted forty-five calendar days in advance of the expiration date.

((4)) (14) Once the PRC application is approved, the PRC must certify in writing on a quarterly basis that the list of equipment the contractor maintains in their application or on the WRRL is accurate. Any contractor that doesn't maintain their list on the WRRL, must resubmit their electronic list on a quarterly basis.

(15) Notification by facsimile or e-mail will be considered written notice.

(16) Failure to certify the accuracy of the equipment list on a quarterly basis may result in the loss of PRC approval.

(17) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval.

((5)) (18) Approval of a response contractor by ecology does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-820 Significant changes require notification.** (1) The PRC is responsible to provide written notification to ecology and all plan holders to whom they are obligated, within twenty-four hours, of any significant change in the information reported in the approved application. The notice shall include the identification of back up resources sufficient to maintain the PRC readiness level, and the estimated date that the original equipment shall be back in full service.

(2) Changes which are considered significant include:

(a) Loss of equipment that (~~affected the planning standard spreadsheet of any plan holder covered by the PRC, personnel identified in ICS positions by plan holders, changes in equipment ownership, or a greater than ten percent decrease in available spill response equipment. Failure to report changes could result in the loss of PRC approval. Notification by facsimile or e-mail will be considered written notice.~~

(2)) results in being out of compliance with any planning standard of any plan holder covered by the PRC;

(b) Transfers of equipment to support spill response for out-of-region spills;

(c) If greater than ten percent of available boom, storage, recovery, dispersants, in situ burn or shoreline clean-up equipment is moved out of the homebase as depicted on the WRRL;

(d) Loss of primary response contractor personnel identified to fill ICS positions for plan holders;

(e) Changes in equipment ownership if used to satisfy a plan holder planning standard; or

(f) Modification or discontinuing of any mutual aid, letter of intent, or contract agreement.

(3) Notification by facsimile or e-mail will be considered written notice.

(4) Failure to report changes could result in the loss of PRC approval.

(5) If ecology determines that PRC approval conditions are no longer met, approval may be revoked (~~(or conditionally modified)~~). The PRC will receive a written notice of the loss of approval (~~(or conditional modifications)~~) and a time period to either appeal or correct the deficiency.

~~((3))~~ (6) Ecology will immediately notify plan holders of changes in the approval status of PRCs .

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-182-360	General planning standards for covered vessel transit locations for all of Puget Sound.
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#### **WSR 12-17-074**

##### **PROPOSED RULES**

#### **DEPARTMENT OF ECOLOGY**

[Order 11-05—Filed August 14, 2012, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-110.

Title of Rule and Other Identifying Information: Preassessment screening and oil spill compensation schedule regulations, chapter 173-183 WAC.

Hearing Location(s): Hearing 1 - Marysville combined with a webinar, on September 25, 2012, at 3:00 p.m. - Presentation, question and answer session followed by the formal public hearing.

Location: Holiday Inn Express, Skykomish Room, 8606 36th Avenue N.E., Marysville, WA 98270.

How to comment by webinar during the September 25 Marysville hearing.

Webinar: Ecology is also offering this presentation, question and answer session and formal public hearing via webinar. Webinars are an on-line meeting forum that you can attend from any computer using internet access. To participant [participate] by phone, you will need to have a phone or computer with phone modem capability. For more information and instructions, go to [http://www.ecy.wa.gov/programs/spills/community\\_outreach/sppr\\_webinar.html](http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html).

Comments: Ecology will accept formal comments at the Marysville location and through the webinar audio portion by calling (800) 704-9804/participant code (88955236#). For more information and instructions, go to [http://www.ecy.wa.gov/programs/spills/community\\_outreach/sppr\\_webinar.html](http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html).

To join the webinar click on the following link for more information and instructions [http://www.ecy.wa.gov/programs/spills/community\\_outreach/sppr\\_webinar.html](http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html).

Hearing 2 - Pasco, on September 26, 2012, at 6:00 p.m. - Presentation, question and answer session followed by the formal public hearing.

Location: Columbia Basin College, Building B, Room B116, 2600 North 20th Avenue, Pasco, WA 99301.

Date of Intended Adoption: December 14, 2012.

Submit Written Comments to: Rebecca Post, P.O. Box 47600, Olympia, WA 98504, e-mail [spillsrulemaking@ecy.wa.gov](mailto:spillsrulemaking@ecy.wa.gov), fax (360) 407-7288, by October 4, 2012.

Assistance for Persons with Disabilities: Contact Mary Ellen Voss, (360) 407-7211, by September 20, 2012. If you have hearing loss, call 711 for Washington relay service. If you have a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will update the preassessment screening and oil spill compensation regulations, chapter 173-183 WAC to incorporate in the new requirements in chapter 122, Laws of 2011 (HB [E2SHB] 1186). The proposed amendments will do the following:

- Update the monetary amount of compensation that can be calculated for spills of 1,000 gallons or greater in volume. This will change the current range of \$1 to \$100 to a new range of \$3 to \$300 per gallon spilled.
- Amend the mathematical formula multipliers contained in WAC 173-183-830, 173-183-840, 173-183-850, and 173-183-860, to reflect the above update.
- Define persistent oil, nonpersistent oil, nonpetroleum oil, recovered oil, and shoreline for the purposes of this rule.
- Codify the method to provide credit back to a spiller for their early on-water recovery actions by moving the Resource Damage Assessment Committee Resolution 96-1.1 from guidance into rule (twenty-four hour recovery credit for nonpersistent oils) and replacing the existing language in WAC 173-183-870.
- Develop the method to provide credit back to a spiller for their early on-water recovery actions by now allowing for a forty-eight hour recovery credit for persistent oils.

Reasons Supporting Proposal: These updates are required by chapter 122, Laws of 2011 (HB [E2SHB] 1186) and because the rule updates move guidance into rule. Without these changes, the current formulas are incapable of achieving the full range of compensation required. The new law specifically addresses persistent oil and sets a time of forty-eight hours to get credit for recovered oil. The current guidance gives twenty-four hours for all oil types. The proposed language addresses these differences and moves all recovery credit guidance into rule.

Statutory Authority for Adoption: RCW 90.48.366, 90.56.050, and 90.48.035.

Statute Being Implemented: Chapter 90.48 RCW as modified by 2011 legislature - chapter 122, Laws of 2011 (E2SHB 1186).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Rebecca Post, Department of Ecology, Headquarters, Lacey, Washington, (360) 407-7114; and Implementation: Dave Byers, Department of Ecology, Headquarters, Lacey, Washington, (360) 407-6974.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Executive Summary: In this rule making, the department of ecology (ecology) proposes to amend chapter 173-183 WAC, Oil spill natural resource damage assessment (NRDA). This rule quantifies injuries from oil spills impacting Washington's publicly-owned natural resources, and scales them to restoration efforts of equal value. This value, expressed as a dollar amount, is called "damages." To determine damages, Washington uses a compensation schedule based on natural resource vulnerability, oil type, and volume of oil spilled.

In 2011 the Washington legislature passed HB [E2SHB] 1186 and the bill was codified in state law (chapter 90.48 RCW). The legislation requires ecology to amend its current compensation schedule. Under the new law, the amount of compensation assessed for spills is between:

- \$1 and \$100 per gallon of oil spilled when the spill is less than one thousand gallons.
- \$3 and \$300 per gallon of oil spilled when the spill is equal to or more than one thousand gallons.

Ecology's proposed rule language must achieve two things:

- Make the monetary damage liability consistent with changes in HB [E2SHB] 1186.
- Address how recovery credits are provided for "persistent" oil.

The probable total quantifiable compliance costs likely resulting from the proposed rule amendments, discounted at an annual rate of 1.58 percent,<sup>1</sup> are shown in Table 1.

Table 1: Compliance Costs

Costs (NRDA)	Low	High
None	\$0.00	\$0.00
Costs (RDA)		
Increased damages paid by liable parties	\$62,638.00	\$322,503.15
Costs (both baselines)		
Required testing (oil in water, oil in debris)	\$51,371.01	\$51,371.01
Required testing (specific gravity)	\$569.30	\$569.30

NRDA total compliance costs	\$51,940.31	\$51,940.31
RDA total compliance costs	\$114,578.31	\$374,443.46

Ecology calculates costs relative to two baselines, the existing NRDA rule and the state resource damage assessment (RDA) committee guidelines. The RDA guidelines are the most practical comparison because they contain the recovery credit process used in Washington state since 1996. These guidelines are not the legal baseline, however, because they are not the existing rule. The existing NRDA rule compensation schedule has not been in practical use. Therefore, we compare the proposed rule to both baselines, in order to provide the most reliable information to the public.

Ecology calculates cost-to-employment ratios examining the relative impacts of the proposed rule on small versus large businesses. Ecology also considers the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor's Executive Order 10-06.<sup>2</sup> Other measures of business ability to cope with compliance costs (sales, hours of labor) are not sufficiently available for the representative set of affected businesses.

Small businesses are defined as businesses with fewer than fifty employees, compared to the largest ten percent of all businesses, as required under the Regulatory Fairness Act (RCW 19.85.070). Ecology finds, as expected with constant costs per spill, that the smallest businesses experience the greatest per-employee costs on average. It costs \$1,728.68 per employee under the NRDA baseline and \$3,813.39 - \$12,462.22 per employee under the RDA baseline. Large businesses pay an average of \$2.34 per employee under the NRDA baseline and \$5.16 - \$16.86 per employee under the RDA baseline.

Ecology includes rule components that help reduce costs for all businesses that take advantage of them within their other business decisions. We assume larger businesses will have larger total costs, and these cost savings will comprise a smaller relative percentage of those total costs. Therefore, these components will likely reduce small business costs by a larger percentage than for large business costs.

Using Washington state office of financial management's input-output model of the state economy, ecology calculates the proposed rule is most likely to result in approximately 0.5249 jobs lost over twenty years under the NRDA baseline. Ecology also expects approximately 1.1579 - 3.7842 jobs lost over twenty years under the RDA baseline.

Section 1: Background:

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology determines the proposed rule amendments to chapter 173-183 WAC are likely to have a disproportionate impact on small business. Therefore, ecology includes cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by ecology.

The intention is to read this with the associated cost-benefit analysis (Ecology Publication #12-08-008). The cost-benefit analysis contains more in-depth discussion of the methodology.

A small business is defined as having fifty or fewer employees. Impacts are estimated by comparing the proposed rule amendments to the way natural resource damage is currently assessed.

The existing regulatory environment is called the "baseline" in this document. It only includes existing regulation through laws and rules at the federal, state, and local levels.

History: A spiller is liable for injuries to Washington's publicly-owned natural resources (e.g., fish, birds, beaches, parks, water quality, and recreational sites). They are responsible for the cost of restoring public resources to prespill levels. They are also responsible for compensating resource losses while the restoration takes place. The state quantifies these injuries through the NRDA process and scales them to restoration efforts of equal value. The value, expressed as a dollar amount, is called "damages." To determine damages, Washington uses a compensation schedule based on natural resource vulnerability, oil type, and volume of oil spilled.

Spillers who quickly remove spilled oil from the water are eligible to receive credit for the amount of oil they clean up. This "recovery credit" recognizes the ecological benefits of early oil recovery and it provides an incentive for spillers to take immediate action when they have a spill.

In 2011 the Washington state legislature passed HB [E2SHB] 1186 and the bill was codified in state law (chapter 90.48 RCW). The legislation requires ecology to amend its current compensation schedule. Under the new law, the amount of compensation assessed for spills is between:

- \$1 and \$100 per gallon of oil spilled when the spill is less than one thousand gallons.
- \$3 and \$300 per gallon of oil spilled when the spill is equal to or more than one thousand gallons.

Ecology's proposed rule language must achieve two things:

- Make the monetary damage liability consistent with changes in HB [E2SHB] 1186.
- Address how recovery credits are provided for "persistent" oil.

Regulatory baseline: The baseline is the regulatory context in the absence of the amendments being adopted. In most cases, the regulatory baseline is the existing rule. If there is no existing rule, the federal or local rule is the baseline. If there is no existing regulation at any level of government, the baseline is the statute authorizing the rule.

The baseline for the proposed rule amendments to the NRDA rule is complex. There are multiple factors involved. These factors are:

- The existing NRDA rule (chapter 173-183 WAC).
- The statute authorizing the NRDA rule (chapter 90.48 RCW), as amended by HB [E2SHB] 1186 in 2011. There exist specific changes to the NRDA rule authorized by statute, which are not analyzed in the cost-benefit per RCW 34.05.328 (5)(b)(v).

- The state RDA committee guidelines for reducing compensation amounts due to the early recovery action of the spiller (recovery credit). These guidelines have been used in Washington state since 1996, and are different from the existing NRDA rule.

Below, ecology shows which changes are explicitly determined in statute. The changes ecology does not have discretion over are not analyzed. For the changes ecology does have discretion over, we compare to two baselines, the existing NRDA rule and the state RDA guidelines. The RDA guidelines are the most practical comparison containing the compensation schedule most closely followed in Washington state since 1996.<sup>3</sup> They are also not the legal baseline however, as the RDA guidelines are not the existing rule. The existing NRDA rule compensation schedule has not been in practical use. Ecology compares the proposed rule to both baselines in order to provide the most reliable information to the public, but the legal comparison and determining factor is the existing NRDA rule. The comparison to the RDA guideline is meant to be informative.

Changes under the proposed rule: Ecology analyzes the impacts of the following changes proposed to the NRDA rule.

- Changes to the compensation schedule. Ecology excludes the change to the multiplier 'x' and the change allowing forty-eight hours for recovery of persistent oils because both are mandated in statute.
- Changes that require testing of recovered oil. To receive credit the liable party is now required to chemically analyze the substance. They must submit the test results to ecology in order to determine the ratio of oil to water or oil to debris for credit.
- Changes requiring testing of specific gravity. To receive the extra twenty-four hours (so they have forty-eight hours total to recover spilled persistent oil), the liable party must test the specific gravity of the oil to show it is in fact persistent.

For more information about these changes, see the associated cost-benefit analysis for the proposed rule amendments (Ecology Publication #12-08-008).

Section 2: Analysis of Compliance Costs for Washington Businesses: Ecology estimates the expected costs associated with the proposed amendments to the NRDA rule as described in Section 1: Background. The baseline is the regulatory circumstance in the absence of the proposed rule amendments adoption. The costs analyzed are associated with specific individual proposed amendments listed in Section 1: Background:

- Compensation schedule.
- Oil in water/debris testing.
- Specific gravity testing.

The RDA guidelines are the most practical comparison containing the compensation schedule most closely followed in Washington state since 1996. They are also not the legal baseline, as the RDA guidelines are not the existing rule. The existing NRDA rule compensation schedule has not been in practical use. Ecology compares the proposed rule to both

baselines in order to provide the most reliable information to the public, but the legal comparison and determining factor is the existing NRDA rule.

Ecology estimates present value compliance costs over twenty years in comparison to both the NRDA and RDA baselines. The total compliance costs over twenty years, discounted at an annual rate of 1.58 percent, appear in Table 2.

Table 2: Compliance Costs

Costs (NRDA)	Low	High
None	\$0.00	\$0.00
Costs (RDA)		
Increased damages paid by liable parties	\$62,638.00	\$322,503.15
Costs (both baselines)		
Required testing (oil in water, oil in debris)	\$51,371.01	\$51,371.01
Required testing (specific gravity)	\$569.30	\$569.30
NRDA total compliance costs	\$51,940.31	\$51,940.31
RDA total compliance costs	\$114,578.31	\$374,443.46

Section 3: Quantification of Costs and Ratios:

Ecology estimates the per-spill costs from compliance with the proposed rule amendments. This means cost estimates and ranges are for the average spill. A constant cost range per spill leads to inherent estimation of disproportionate costs across differently-sized businesses. In this section, ecology summarizes compliance cost calculations (the full cost and benefit analyses are in the associated cost-benefit analysis, Ecology Publication #12-08-008).

Ecology also discusses general qualities of businesses and compliance costs and the distribution of compliance costs across different business sizes.

Compensation schedule compliance costs.

NRDA Baseline: From the NRDA baseline, there is no discretionary compliance cost associated with the changes in compensation schedule. All discretionary changes result in fewer damages paid by liable parties.

RDA Baseline: From the RDA baseline, when there is no containment, shoreline contact, and the spill extends past one thousand feet from the origin of the spill (4.6 percent of observations), a liable party pays greater damages under the proposed rule. Ecology estimates the average per-spill cost from its overall cost calculations as \$98.39 - \$506.60 in current dollar values assuming 31.83 spills per year based on historical data. The costs associated with spills occurring in the future are discounted at an annual rate of 1.58 percent.

Oil in water/debris testing costs: Oil in water/debris testing costs are a change from both baselines. Ecology estimates the average per-spill cost of testing oil in water as \$60.48. The average per-spill cost of testing oil in debris is \$20.21. These estimates are based on historical data of recovery credit based on oil in water (twenty-two percent of all spills) or oil in debris (six percent of all spills). The total

expected testing cost, per spill, for oil in water and oil in debris therefore equals \$80.70 in current dollar values. The costs associated with spills occurring in the future are discounted at an annual rate of 1.58 percent.

Specific gravity testing costs: Specific gravity testing costs are a change from both baselines. Ecology estimates the average per-spill cost of testing specific gravity as \$0.89 in current dollar values. Ecology uses historical data of the ratio of liable parties spilling persistent oil (4.2 percent). The costs associated with spills occurring in the future are discounted at an annual rate of 1.58 percent.

Cost per employee: Affected industries are comprised of any business with a risk of spilling oil to state surface waters. The proposed amendments may impact these businesses. Ecology identifies nineteen industries affected in the past using data from 2004-2011 (see Table 4). Any business that spills oil to state surface waters is affected; these are the only industries we are able to list with nonzero likelihood given our data. We believe the given codes illustrate the industries most likely affected.

Ecology identifies the distribution of businesses across various employment-size categories. Each observation is associated with its respective business size. A single industry may have businesses comprised of different employment sizes. Businesses were identified across the full range of categories from one - four employees to over ten thousand employees.<sup>4</sup>

The majority of businesses affected in our data are navigational services to shipping, which include tugboat services and cargo salvaging services.<sup>5</sup> Other industries include fish and seafood merchant wholesalers, and the seafood canning industry (in order of likelihood).

In accordance with small business economic impact statement (SBEIS) requirements in the Regulatory Fairness Act, ecology identifies the largest ten percent of businesses having to comply with the proposed rule amendments (see Table 3). The approximate largest ten percent of businesses employ between two hundred fifty and over ten thousand people each.<sup>6</sup>

Table 3: Employment Sizes

Employment	Freq.	Percent (%)
1 to 4	5	13.52
5 to 9	1	2.7
10 to 19	2	5.41
20 to 49	8	21.62
50 to 99	5	13.51
100 to 249	9	24.32
250 to 499	1	2.7
> 10,000	3	8.1
no data	3	8.11
Total	37	100

Ecology is required to compare the costs per employee for small businesses (those employing fewer than fifty people) with the largest ten percent of all businesses complying. In comparing the per-employee costs of compliance with the

proposed rule amendments ecology finds that the largest businesses experience the lowest per-employee costs (using a weighted average of their respective employment sizes equal to 22,211 employees)<sup>7</sup>. Their costs are \$2.34 per employee under the NRDA baseline and \$5.16 - \$16.86 per employee under the RDA baseline.

The weighted average of employment sizes for businesses with less than fifty employees is equal to approximately thirty employees. The smallest businesses experience greater per-employee costs (relative to the top ten percent of businesses). Their costs are \$1,728.68 per employee under the NRDA baseline and \$3,813.39 - \$12,462.22 per employee under the RDA baseline.

As a result, ecology believes the proposed rule imposes disproportionate costs on small businesses. We must then include in the proposed rule elements mitigating costs to small businesses (discussed in Section 4: Actions Taken to Reduce the Impact of the Rule on Small Business).

The above analysis assumes there is no correlation between business size and the likelihood of an oil spill. For example, if large businesses are more likely to spill oil (if they deal in larger quantities of oil or more frequently use oil), then the disproportionate cost impact between small and large businesses is smaller.

Section 4: Actions Taken to Reduce the Impact of the Rule on Small Business:

Ecology has limited scope in this proposed rule making to reduce the impacts specifically to small business. In choosing the least burdensome means of facilitating compliance and protecting human health and the environment, ecology provides options to help small businesses reduce their compliance costs by greater percentages. We could not exempt small businesses from the remaining requirements to reduce costs, while fulfilling the goals and objectives of the law.

The current oil recovery credit form (ECY 050-49)<sup>8</sup> has been used in guidance since 1996. Ecology never required this form. The information it generated was given to us in order for a potentially liable party to get recovery credit. Since the form was not required, several clean-up contractors developed their own spreadsheets for documenting the required volumes. Some liable parties supplied incorrect information. This resulted in time spent resubmitting information. To avoid these types of errors, the new form is as explicit as possible. Areas requiring laboratory analysis for proper concentration or volume determinations are clearly marked. This should provide marginal cost savings. Liable parties may save time not resubmitting forms and increase their administrative efficiency.

Under the proposed rule, liable parties may either squeeze their sorbent materials to determine the percentage of oil, or they may default to a percentage of seventy-five percent oil. Under either baseline, liable parties may either use the squeeze method to determine the percentage of oil, or they may haggle with ecology. There is conceivably a time savings from adopting a default. Ecology believes agents will act in their best interests, and squeeze if they believe their sorbent materials are comprised of greater than seventy-five percent oil. If businesses believe their sorbent materials

are comprised of less than seventy-five percent oil, they may choose the default and receive more credit.

From the NRDA baseline, there is a savings to liable parties from smaller damages. These savings were not mandated in statute. We assume larger businesses will have larger total costs, and these cost savings will comprise a smaller relative percentage of those total costs. Therefore, these components will likely reduce small business costs by a larger percentage than for large business costs.

Section 5: The Involvement of Small Business in the Development of the Proposed Rule Amendments:

During the CR-102 (informal rule-making phase) starting in January 2012, ecology convened a special rule advisory committee that provided informal comments on the draft regulation and advised ecology about how environmental, economic and other issues might be addressed. The committee met in May 2012 to specifically address this rule update. Committee members included invited representatives and observers from:

- Oil handling facilities and oil shipping companies.
- Umbrella oil spill contingency plan holders.
- Spill response contractors.
- Tug and towing companies.
- Commercial fishing vessels.
- Cargo and other shipping companies.
- Commercial shellfish growers.
- Commercial fisheries.
- Washington ports.
- Tribal governments.
- Counties and cities.
- Environmental organizations.
- Recreational interests.
- State and federal agencies.

All the committee meetings were open to the public and available through webinar.

Section 6: North American Industry Classification System (NAICS) Codes of Impacted Industries:

This section lists NAICS codes for industries ecology expects to be impacted by the proposed rule amendments in Table 4. We derive these codes from our data set of sixty-six observations from 2004-2011. These observations are spills not missing data in our paper records. Out of a total of one hundred forty-five observations, fifty-four percent of the observations are missing data. Out of these sixty-six observations, twenty-three are individuals, and for ten observations we cannot find data on the given affected business.

Table 4: NAICS Codes of Businesses Possibly Needing to Comply

114111	236115	238320	238910	311711	324110
424460	445230	447190	452111	483211	484220
488330	488510	522110	561990	562920	611110
999999					

We find that the majority of businesses affected in our data are navigational services to shipping, which include tug-boat services and cargo salvaging services.<sup>9</sup> Other industries include fish and seafood merchant wholesalers, the seafood

canning industry, as well as the transportation and construction industries.

This is likely not a comprehensive list - rather, it illustrates the types of businesses we came across in the data from 2004-2011. Any business with the risk of spilling oil to state surface waters may be impacted by the proposed amendments.<sup>10</sup> These are the only industries we are able to list with nonzero likelihood. We believe the given codes illustrate which industries are most likely to be affected.

Section 7: Impacts on Jobs:

Ecology uses the Washington state office of financial management's Washington input-output model.<sup>11</sup> The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output. To estimate these impacts, ecology assumes the following distribution of affected industries: Sixty-five percent to water transportation, and thirty-five percent to fishing. Ecology makes these assumptions based on the data found in Appendix A, ignoring affected industries only appearing once on the list.<sup>12</sup> While more industries than the two above will likely be affected by the rule, we believe these two industries are likely the most impacted (they comprise approximately sixty percent of the observations we have data on, that are not individuals). Ecology believes this provides an accurate illustration of likely job impacts.

Given the above assumptions, ecology expects approximately 0.5249 jobs lost over twenty years under the NRDA baseline. Ecology also expects approximately 1.1579 - 3.7842 jobs lost over twenty years under the RDA baseline.

These are jobs directly lost within impacted industries, plus jobs lost in supporting industries (wholesale goods, energy, support services, transportation) and industries where labor income would be spent (retail, services, energy, housing, transportation).

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Appendix A

NAICS code	Freq.	Percent (%)	Cum. (%)
No data	10	15.15	15.15
Individual	23	34.85	50
114111	1	1.52	51.52
236115	1	1.52	53.03
238320	1	1.52	54.55
238910	1	1.52	56.06
311711	2	3.03	59.09
324110	1	1.52	60.61
424460	5	7.58	68.18
445230	1	1.52	69.7
447190	1	1.52	71.21
483211	2	3.03	74.24
484220	1	1.52	75.76
488330	11	16.67	92.42
488510	1	1.52	93.94
561990	1	1.52	95.45
562920	1	1.52	96.97
611110	1	1.52	98.48
999999	1	1.52	100
Total	66	100	

<sup>1</sup>Ecology uses a discount rate based on interest that could be earned risk-free on today's dollars over the relevant time period. Ecology uses the ten-year average rate of return offered on the United States Treasury's T-Bills (inflation-indexed short-term bonds; United States Treasury Department, 2012) as the discount rate, averaging 1.58 percent over the last ten years.

<sup>2</sup>Governor's Executive Order 10-06.

<sup>3</sup>The RDA guidelines are, as their name suggests, guidance, and in recent years, has incorporated aspects of the proposed rule (such as when there were data limitations that prevented calculation of the compensation schedule). As a result, the changes from either baseline estimated in this analysis are likely overestimates because in practice some changes (such as shoreline contact) have already been in use.

<sup>4</sup>Employment size categories available from Washington employment security department: 1-4, 5-9, 10-19, 20-49, 50-99, 100-249, 250-499, 500-999, 1,000-4,999, 5,000-9,999, and 10,000+ employees.

<sup>5</sup>Please see Appendix A for a table of industries impacted by frequency, comprised from our 2004-2011 data sets. These are listed by North American Industry Classification System (NAICS) codes. "Navigational Services to Shipping" and other capitalized industries correspond to a specific NAICS code.

<sup>6</sup>The largest ten percent actually comprises 10.8 percent of our total observations. Because ten percent of thirty-seven observations will give us 3.7 observations, we have rounded up to four.

<sup>7</sup>The employment sizes for the three observations greater than 10,000 employees are 17,468, 26,000, and 45,000, respectively. For each range we assume a uniform distribution - each employee size in that range is equally likely for an observation found in that range.

<sup>8</sup>Current Oil Recovery Credit Form.

<sup>9</sup>Please see Appendix A for a table of industries impacted by frequency, comprised from our 2004-2011 data sets.

<sup>10</sup>Unlikely industries may be commercial banks, or department stores - yet they both appear once in our data.

<sup>11</sup>Please see the Washington state office of financial management's site for more information on the input-output model: <http://www.ofm.wa.gov/economy/io/2002/default.asp>.

<sup>12</sup>Assuming Inland Water Freight Transportation and Navigational Services to Shipping qualify as Water Transportation, while Seafood Canning and Fish and Seafood Merchant Wholesalers qualify as Fishing.

A copy of the statement may be obtained by contacting Education and Outreach Specialist, Spills Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7455, fax (360) 407-7288, e-mail [spillsrulemaking@ecy.wa.gov](mailto:spillsrulemaking@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Education and Outreach Specialist, Spills Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7455, fax (360) 407-7288, e-mail [spillsrulemaking@ecy.wa.gov](mailto:spillsrulemaking@ecy.wa.gov).

August 14, 2012

Polly Zehm

Deputy Director

### Chapter 173-183 WAC

~~((PREASSESSMENT SCREENING AND OIL SPILL  
COMPENSATION SCHEDULE REGULATIONS))~~  
OIL SPILL NATURAL RESOURCE DAMAGE  
ASSESSMENT

AMENDATORY SECTION (Amending Order 07-14, filed 11/7/07, effective 12/8/07)

**WAC 173-183-100 Definitions.** (1) "Columbia River estuary environment" means the habitat and all other public resources associated with or dependent on the estuarine waters of the Columbia River.

(2) "Compensation schedule" means the set of procedures enumerated in WAC 173-183-300 through 173-183-870 to determine the public resource damages resulting from an oil spill for cases in which damages are not quantifiable at a reasonable cost.

(3) "Damages" means the amount of monetary compensation necessary to:

(a) Restore any injured public resource to its condition before sustaining injury as a result of an oil discharge in violation of chapter 90.48 or 90.56 RCW, to the extent technically feasible, including any loss in value incurred during the period between injury and restoration in cases where damages are quantifiable at a reasonable cost; or

(b) Adequately compensate for the loss or diminution in value as determined through application of the compensation schedule provided in WAC 173-183-300 through 173-183-870 in cases where damages are not quantifiable at a reasonable cost.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology, or his or her designee.

(6) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(7) "Estuarine environment" means the habitat and all other public resources associated with or dependent on estuarine waters of the state.

(8) "Estuarine waters" or "estuarine waters of the state" means the waters within state jurisdiction that are semienclosed by land but have open, partly obstructed, or sporadic access to the ocean, and in which seawater is at least occasionally diluted by freshwater runoff from land. Estuarine waters of the state include adjacent tidal flats and beaches up to the limit of tidal inundation or wave splash. For purposes of this chapter, estuarine waters of the state include those designated on the map attached as Appendix 1 to this chapter, and the portion of the Columbia River estuary within state jurisdiction upstream to river mile 46 or the line drawn perpendicularly across the river which touches the upstream end of Puget Island.

(9) "Freshwater stream, river, and lake environment" means the habitat and all other public resources associated with or dependent on the streams, rivers, and lakes under state jurisdiction.

(10) "Freshwater wetland" or "freshwater wetlands" means lands transitional between terrestrial and freshwater aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominately undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

(11) "Freshwater wetland environment" means the habitat and all other public resources associated with or dependent on the freshwater wetlands of the state.

(12) "Freshwaters" or "freshwaters of the state" means all waters of the state except those classified as marine and estuarine waters of the state as defined in this chapter, including lakes, rivers, streams, ponds, other surface waters and wetlands.

(13) "Habitat" means the substrate and complement of associated biota not otherwise included in the vulnerability rankings in the applicable compensation schedule(s) that is part of this chapter.

(14) "Immediate removal" or "immediately removes" means removal of the spilled oil, or portions thereof, from the receiving environment by the potentially liable party within six hours of spill initiation.

(15) "Initial department responder" means the department of ecology spill responder who first arrives at the scene of the spill.

(16) "Injury" or "injuries" means an adverse change, either long- or short-term, to a public resource resulting either directly or indirectly from exposure to a discharge of oil in violation of chapter 90.48 or 90.56 RCW.

(17) "Loss in services" means a temporary or permanent reduction in the ability of the resource to provide its use or benefit to the public or to other resources.

(18) "Loss in value or lost value" of a damaged resource means the amount equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation,

leasing, and licensing revenues during the period between injury and restoration; indirect use values may include existence, bequest, option, and aesthetic values.

(19) "Marine and estuarine habitats" mean the habitats found in marine and estuarine waters of the state as defined in this chapter.

(20) "Marine birds" means all seabirds, shorebirds, waterfowl, raptors and other avifauna that are dependent on marine and estuarine environments of the state for some portion of their life requirements including feeding, breeding, and habitat.

(21) "Marine environment" means the habitat and all other public resources associated with or dependent on marine waters of the state.

(22) "Marine fish," in context of the compensation schedule, means the species listed in Appendix 2.

(23) "Marine mammals" means the cetaceans, pinnipeds, sea otters, and river otters associated with marine and estuarine waters of the state.

(24) "Marine waters" or "marine waters of the state" means all coastal waters not appreciably diluted by freshwater, including open coastal areas, straits, and euhaline inland waters extending from the seaward limit of state jurisdiction to:

(a) The landward limit of tidal inundation or wave splash; or

(b) The seaward limit of estuarine waters of the state.

(25) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F); or

(b) A nonpetroleum oil with a specific gravity less than 0.8.

(c) For the purposes of WAC 173-183-870, any spilled oil that consists of a combination of spilled nonpersistent and spilled persistent oil, will be considered a nonpersistent oil.

(26) "Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

(27) "Not quantifiable at a reasonable cost" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable time frame.

~~((26))~~ (28) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and pressure and any fractionation thereof, including, but not limited to, crude oil, petroleum gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by P.L. 99-499.

~~((27))~~ (29) "On scene coordinator" (OSC) means the department official who supervises the spill response team

and compiles the initial report concerning the facts and circumstances of the spill for the department.

~~((28))~~ (30) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(31) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

~~((29))~~ (32) "Potentially liable party" means the person or persons who may be liable for damages resulting from an oil spill.

~~((30))~~ (33) "Preassessment screening" means the investigation and determination of the facts and circumstances surrounding an oil spill which are used to determine whether a damage assessment investigation should be conducted, or alternatively, whether the compensation schedule will be used to assess damages.

~~((31))~~ (34) "Public resources" or "publicly owned resources" means fish, animals, vegetation, land, waters of the state, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state.

~~((32))~~ (35) "Reasonable cost" for a damage assessment means a cost that is anticipated to be less than the amount of damages that may have occurred or may occur.

~~((33))~~ (36) "Receiving environment" means waters of the state exposed to the spill and all public resources associated with or dependent on the exposed waters.

~~((34))~~ (37) "Recovered oil" is oil removed from the water using hand or mechanical techniques or oleophilic sorbent materials. It does not include spilled oil remobilized as a clean-up effort after shoreline contact and it does not include oil removed from the water's surface using dispersing or solidifying agents, or oil removed by burning.

~~(38)~~ (38) "Resource damage assessment committee" or "RDA committee" means the preassessment screening committee established under RCW 90.48.368 and charged with determining whether to conduct detailed damage assessment studies or to apply the compensation schedule for oil spills into waters of the state, and overseeing reconnaissance and damage assessment activities.

~~((35))~~ (39) "Restoration or enhancement projects or studies" means an activity that is intended to restore, replenish, restock, or replace public resources, or to further investigate the long-term effect of resource injuries as determined by the RDA committee for the benefit of the public.

~~((36))~~ (40) "Salmon," in context of the compensation schedule, means the species listed in Appendix 3.

~~((37))~~ (41) "Scientific advisory board" means the advisory group established by the department to assist in development of the compensation schedule as required by RCW 90.48.366.

~~((38))~~ (42) "Season" or "seasons" means winter, spring, summer, and/or fall, where winter occurs during the months December through February, spring occurs during the months March through May, summer occurs during the months June through August, and fall occurs during the months September through November.

~~((39))~~ (43) "Shellfish," in context of the compensation schedule, means the species listed in Appendix 4, but does not include privately grown shellfish on public lands.

~~((40))~~ (44) "Shoreline for the purposes of WAC 173-183-870 only, means any interface between the surface of the waters of the state, including wetlands, and sediment or soil."

(45) "Spill" means an unauthorized discharge of oil into waters of the state.

~~((41))~~ (46) "State" means state of Washington.

~~((42))~~ (47) "State trustee agencies" means the state agencies with responsibility for protecting and/or managing public resources.

~~((43))~~ (48) "Subregion" or "subregions" means the areas into which state marine and estuarine waters have been divided for purposes of the compensation schedule as designated on the maps attached as Appendix 1.

~~((44))~~ (49) "Technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the public resource before the injury.

~~((45))~~ (50) "Trust resources" means the public resource(s) under a particular state agency's jurisdiction for protection and/or management.

~~((46))~~ (51) "Unquantifiable damage" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable period of time.

~~((47))~~ (52) "Waters of the state" or "state waters" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((48))~~ (53) "Wetland" or "wetlands" means lands transitional between terrestrial and aquatic systems where the

water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominantly undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-230 RDA committee.** (1) The following state agencies shall have membership on the RDA committee: Departments of archaeology and historic preservation, ecology, ~~((fisheries))~~ fish and wildlife, health, natural resources, ~~((wildlife))~~ and the parks and recreation commission.

(2) Agencies with membership on the RDA committee shall nominate a representative and alternate to be appointed to the committee by the director.

(3) The department of ecology shall chair the RDA committee.

(4) The department may select representatives from the following agencies and governments for participation on the RDA committee on a spill-by-spill basis: Departments of emergency management, as well as other federal, state, and local agencies, and tribal and local governments whose presence would enhance reconnaissance or damage assessment activities of spill response.

If a selected representative declines or is unable to participate on the committee, the representative shall provide written notice to the department within twelve hours of being notified so that a replacement member may be appointed. Prompt consideration will be given to other local, state, or federal agency, or tribal government requests for participation on the RDA committee on a spill-by-spill basis.

(5) The RDA committee shall convene as soon as possible, but no later than thirty days after the department receives notification of a spill, or the next regularly scheduled meeting of the committee following a spill.

AMENDATORY SECTION (Amending Order 07-14, filed 11/7/07, effective 12/8/07)

**WAC 173-183-320 Compensation schedule.** (1) The compensation schedule determines adequate compensation for unquantifiable damages or for damages not quantifiable at a reasonable cost for persons liable under RCW 90.48.142.

(2) Adequate compensation as determined from the compensation schedule is derived from preexisting information of resource vulnerability to a class of oil spilled in a particular subregion of the state during a particular season, plus any additional information collected at the reconnaissance stage of the spill response.

(3) Under RCW 90.48.366, the amount of compensation assessed under this schedule shall be:

(a) For spills totaling one thousand gallons or more in any one event, no less than three dollars per gallon of oil spilled and no greater than three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

**AMENDATORY SECTION** (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-330 Resource damage assessment using the compensation schedule.** The compensation schedule includes:

(1) A relative ranking for each of the classes of oil defined in this chapter as determined by their known chemical, physical, and mechanical properties, and other factors that may affect the severity and persistence of the spill on the receiving environment;

(2) A relative vulnerability ranking of receiving environments which takes into account location of the spill, habitat and public resource sensitivity to oil, seasonal distribution of public resources, areas of recreational use and aesthetic importance, the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law, and other areas of special ecological or recreational importance as determined by the department;

(3) A quantitative method for determining public resource damages resulting from an oil spill, based on the oil effects and vulnerability rankings designed to compensate the people of this state for those damages that cannot be quantified at a reasonable cost that result from oil spills; and

(4) A method for adjusting damages calculated under the compensation schedule based on recovery actions taken by the potentially liable party (~~that~~:

~~(a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or~~

~~(b) Enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife).~~

**AMENDATORY SECTION** (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-400 Vulnerability of marine and estuarine environments to oil spills.** (1) The purpose of this section is to describe the method of ranking vulnerability of marine and estuarine environments, excluding the Columbia River estuary environment to oil spills for the purposes of assessing damages using the compensation schedule.

(2) Marine and estuarine waters of the state excluding the Columbia River estuary are divided into sixteen regions and one hundred thirty-one subregions for purposes of RCW 90.48.366, as designated on the maps attached as Appendix 5 of this chapter.

(3) A spill vulnerability score (SVS) shall be calculated at the time of a spill for the most sensitive subregion and season impacted by the spill. The SVS rates the vulnerability of public resources to spilled oil based on the propensity of the oil to cause acute toxicity and mechanical injury, and to per-

sist in the environment. SVS is determined by summing the vulnerability scores for marine birds, marine mammals, fishery species, recreational use and habitats for the subregion(s) and most sensitive season impacted by the spill. The formula to be used to calculate SVS for each of the three oil effects, acute toxicity, mechanical injury, and persistence, is as follows:

$$\text{Spill vulnerability score (SVS)}_{ij} = \text{HVS}_i + \text{BVS}_j + \text{MVS}_j + \text{MFVS}_j + \text{SFVS}_j + \text{SAVS}_j + \text{RVS}_j$$

where HVS<sub>i</sub> = habitat vulnerability to oil's propensity to cause i

BVS = marine bird vulnerability score (WAC 173-183-420(3));

MVS = marine mammal vulnerability score (WAC 173-183-460(3));

MFVS = marine fisheries vulnerability score (WAC 173-183-430(3));

SFVS = shellfish vulnerability score (WAC 173-183-440(3));

SAVS = salmon vulnerability score (WAC 173-183-450(5));

RVS = recreation vulnerability score (WAC 173-183-470(3));

i = acute toxicity (AT), mechanical injury (MI), or persistence (~~(Per)~~ PER); and

j = the most sensitive season affected by the spill: Spring, summer, fall, or winter

**AMENDATORY SECTION** (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-810 On-scene coordinator responsibilities.** (1) The OSC (~~(or department responder,)~~) or (~~his or her~~) designee(~~(s)~~) shall make the following determinations:

(a) Quantity and type of oil spilled;

(b) Extent and location of the spill; (~~and~~)

(c) Whether containment of spilled oil was effective within the times specified in WAC 173-183-870 (1)(c) and (d);

(d) Whether spilled oil contacted the shoreline within the times specified in WAC 173-183-870 (1)(c) and (d); and

(e) The amount of oil cleaned up on a daily basis, and in total.

(2) The RDA committee shall allow the potentially liable party an opportunity to submit further information on the determinations made by the OSC in subsection (1) of this section.

(3) The potentially liable party (PLP) may hire an independent expert to determine the volume of oil spilled and (~~cleaned up~~) recovered, including the volume (~~cleaned up~~) recovered within the first (~~six hours~~) twenty-four hours for nonpersistent oil and forty-eight hours for persistent oil after spill initiation. The volume determinations made by the independent expert shall be used in calculations of damages under the compensation schedule if the independent expert selected is acceptable to both the PLP and the department.

Determinations by the mutually agreed upon independent expert of the quantity of oil spilled and cleaned up shall be provided to the RDA committee chair within sixty days of the spill under consideration.

~~((3))~~ (4) The OSC (~~or department responder~~) shall provide the information enumerated in subsection (1) of this section to the RDA committee chair in a timely manner.

AMENDATORY SECTION (Amending Order 08-14, filed 3/10/09, effective 4/10/09)

**WAC 173-183-830 Calculation of damages for spills into marine and estuarine waters, except the Columbia River estuary.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into marine and estuarine waters, except the estuarine waters of Columbia River. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
- (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
- (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(a).

(2) In making the determination of percent-coverage of habitat types, the RDA committee chair may assume that the habitat-type visible at low tide extends out to the 20 meter depth contour.

(3) Damages liability shall be calculated using the following formula:

$$((\text{Damages } (\$)) = \text{gallons spilled} * 0.208 * [(OIL_{AT} * SVS_{ATj}) + (OIL_{MI} * SVS_{MIj}) + (OIL_{PER} * SVS_{PERj})])$$

where: gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;  
SVS<sub>ij</sub> = spill vulnerability score (from WAC 173-183-400(3));  
OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-340);  
OIL<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-340); and  
OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-340).  
i = acute toxicity, mechanical injury and persistence effect of oil  
j = the most sensitive season affected by the spill  
0.208 = multiplier to adjust the damages calculated to the \$1-100 per gallon range.)

$$\text{Damages } (\$) = x * [(OIL_{AT} * SVS_{ATi} * \text{total gallons spilled}) + (OIL_{MI} * SVS_{MIj} * \text{total gallons spilled}) + (OIL_{PER} * SVS_{PERj} * \text{total gallons spilled})]$$

where: total gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;

SVS<sub>ij</sub> = spill vulnerability score (from WAC 173-183-400(3));

OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-340);

OIL<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-340); and

OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-340).

i = acute toxicity, mechanical injury and persistence effect of oil

j = the most sensitive season affected by the spill

x = multiplier of 0.208 for spills less than 1000 gallons in volume to adjust the damages calculated to the \$1-100 per gallon range.

x = multiplier of 0.624 for spills of 1000 gallons or more in volume to adjust the damages calculated to the \$3-300 per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up. For spills less than one thousand gallons, when the formula results in damages less than one dollar per gallon, the damages shall be adjusted to the minimum of one dollar per gallon spilled. For spills of one thousand gallons or more in volume, when the formula results in damages less than three dollars per gallon, the damages shall be adjusted to the minimum of three dollars per gallon spilled.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 08-14, filed 3/10/09, effective 4/10/09)

**WAC 173-183-840 Calculation of damages for spills into the Columbia River estuary.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into the estuarine waters of Columbia River. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
- (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
- (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(b).

(2) Damages liability shall be calculated using the following formula:

$$((\text{Damages } (\$)) = \text{gallons spilled} * 0.508 * SVS_j * (OIL_{AT} + OIL_{MI} + OIL_{PER}))$$

where: gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810  
SVS<sub>j</sub> = spill vulnerability score (from WAC 173-183-500(3));  
j = the most sensitive season affected by the spill  
OH<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-360);  
OH<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-360); and  
OH<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-360);  
0.508 = multiplier to adjust the damages calculated to the \$1-100 per gallon range.))

Damages (\$) =

$$x * [(OIL_{AT} * SVS_j * \text{total gallons spilled}) + (OIL_{MI} * SVS_j * \text{total gallons spilled}) + (OIL_{PER} * SVS_j * \text{total gallons spilled})]$$

where: total gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810;  
SVS<sub>j</sub> = spill vulnerability score (from WAC 173-183-500(5));  
j = the most sensitive season affected by the spill  
OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-340);  
OIL<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-340); and  
OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-340).  
x = multiplier of 0.508 for spills less than 1000 gallons in volume to adjust the damages calculated to the \$1-100 per gallon range.  
x = multiplier of 1.524 for spills of 1000 gallons or more in volume to adjust the damages calculated to the \$3-300 per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up. For spills less than one thousand gallons, when the formula results in damages less than one dollar per gallon, the damages shall be adjusted to the minimum of one dollar per gallon spilled. For spills of one thousand gallons or more in volume, when the formula results in damages less than three dollars per gallon, the damages shall be adjusted to the minimum of three dollars per gallon spilled.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 08-14, filed 3/10/09, effective 4/10/09)

**WAC 173-183-850 Calculation of damages for spills in freshwater streams, rivers, and lakes.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into freshwater streams, rivers, and lakes. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
- (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
- (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(c).

(2) Damages liability shall be calculated using the following formula:

((Damages (\$) =

$$\text{gallons spilled} * 0.162 * SVS * (OH_{AT} + OH_{MI} + OH_{PER})$$

where: gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;  
SVS = Spill vulnerability score [from WAC 173-183-600(3)];  
OH<sub>AT</sub> = Acute Toxicity Score for Oil [from WAC 173-183-340];  
OH<sub>MI</sub> = Mechanical Injury Score for Oil [from WAC 173-183-340]; and  
OH<sub>PER</sub> = Persistence Score for Oil [from WAC 173-183-340].  
0.162 = multiplier to adjust damages calculated to the \$1-100 per gallon range.))

Damages (\$) =

$$x * [(OIL_{AT} * SVS * \text{total gallons spilled}) + (OIL_{MI} * SVS * \text{total gallons spilled}) + (OIL_{PER} * SVS * \text{total gallons spilled})]$$

where: total gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;  
SVS = Spill vulnerability score (from WAC 173-183-600(3));  
OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-340);  
OIL<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-340); and  
OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-340).  
x = multiplier of 0.162 for spills less than 1000 gallons in volume to adjust the damages calculated to the \$1-100 per gallon range.

x = multiplier of 0.486 for spills of 1000 gallons or more in volume to adjust the damages calculated to the \$3-300 per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up. For spills less than one thousand gallons, when the formula results in damages less than one dollar per gallon, the damages shall be adjusted to the minimum of one dollar per gallon spilled. For spills of one thousand gallons or more in volume, when the formula results in damages less than three dollars per gallon, the damages shall be adjusted to the minimum of three dollars per gallon spilled.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 08-14, filed 3/10/09, effective 4/10/09)

**WAC 173-183-860 Calculation of damages for spills into freshwater wetlands.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into freshwater wetlands. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
  - (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
  - (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(d).
- (2) Damages liability shall be calculated using the following formula:

~~((Damages (\$) = gallons spilled \* 1.620 \* SVS \* (OIL<sub>AT</sub> + OIL<sub>MH</sub> + OIL<sub>PER</sub>))~~

~~where: gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810;  
SVS = Spill vulnerability score [from WAC 173-183-700(3)];  
OIL<sub>AT</sub> = Acute Toxicity Score for Oil [from WAC 173-183-340];  
OIL<sub>MH</sub> = Mechanical Injury Score for Oil [from WAC 173-183-340]; and  
OIL<sub>PER</sub> = Persistence Score for Oil [from WAC 173-183-340].  
1.620 = multiplier to adjust damages calculated to the \$1-100 per gallon range;))~~

Damages (\$) = x \* [(OIL<sub>AT</sub> \* SVS \* total gallons spilled) + (OIL<sub>MH</sub> \* SVS \* total gallons spilled) + (OIL<sub>PER</sub> \* SVS \* total gallons spilled)]

where: total gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;

SVS = Spill vulnerability score (from WAC 173-183-700(3));

OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-340);

OIL<sub>MH</sub> = Mechanical Injury Score for Oil (from WAC 173-183-340); and

OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-340).

x = multiplier of 1.620 for spills less than 1000 gallons in volume to adjust the damages calculated to the \$1-100 per gallon range.

x = multiplier of 4.860 for spills of 1000 gallons or more in volume to adjust the damages calculated to the \$3-300 per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up. For spills less than one thousand gallons, when the formula results in damages less than one dollar per gallon, the damages shall be adjusted to the minimum of one dollar per gallon spilled. For spills of one thousand gallons or more in volume, when the formula results in damages less than three dollars per gallon, the damages shall be adjusted to the minimum of three dollars per gallon spilled.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-870 ((Modification of damages based on actions taken by the PLP)) Reduction of damages based on actions taken by the potential liable party (PLP).** ~~((1) Damages calculated under WAC 173-183-830 through 173-183-860 may be reduced by the amounts specified in subsections (2) through (5) of this section, as determined by the RDA committee, in the following cases:~~

- ~~(a) Where the potentially liable party takes an action that results in no spill exposure and no injury to the following special features: Seal and sea lion haulouts, public recreational areas, smelt, sand lance, and herring spawning areas, salmon concentration areas, hardshell and softshell clam beds, and seabird breeding colonies;~~
- ~~(b) Where the potentially liable party takes an action that restores, rehabilitates, or enhances resources injured by the spill; and~~
- ~~(c) Where the potentially liable party immediately booms spilled oil that has not come into contact with the shore, in areas where water depth is greater than twenty meters, and immediately removes the spilled oil that has been contained in booming.~~

~~(2) When the conditions specified under subsection (1)(a) of this section are met, compensation shall be reduced by the amount that the special feature that was protected contributed to the amount of damages calculated under WAC 173-183-830 through 173-183-860. Decisions on how much the protected special feature contributed to the amount of damages calculated under the compensation schedule shall be made by the RDA committee.~~

~~(3) When conditions specified under subsection (1)(b) of this section are met, amount of damages calculated under WAC 173-183-830 through 173-183-860 may be reduced. Decisions on reduction of damages shall be made by the RDA committee.~~

~~(4) When the conditions specified under subsection (1)(e) of this section are met, the damages calculated under WAC 173-183-830 through 173-183-860 shall be reduced as described by the following steps:~~

~~(a) Two separate damages calculations shall be made using the applicable damage liability formula(s) provided in WAC 173-183-830 through 173-183-860. The number of gallons used in the first formula shall be the number of gallons immediately removed from the receiving environment as described in subsection (1)(e) of this section. The number of gallons used the second formula shall be the number of gallons spilled but not immediately removed from the receiving environment. The values of all other formula variables shall be as defined for the applicable formulas in WAC 173-183-830 through 173-183-860, except as described in subsection (4)(b) of this section;~~

~~(b) The values of the mechanical injury ( $OIL_{MI}$ ) and persistence ( $OIL_{PER}$ ) scores for oils shall be reduced by ten percent in the first formula; and~~

~~(c) Damages derived from the first and second formulas shall be added together to calculate the reduced damages liability.~~

~~(5) In no case shall the modifications to compensation enumerated in subsections (1) through (4) of this section result in a reduction of damages to less than one dollar per gallon of oil spilled.) (1) Damages liability calculated under WAC 173-183-830 through 173-183-860 may be reduced by the RDA committee based on post-spill actions by the PLP. Post-spill actions by the PLP that the RDA committee will evaluate are:~~

~~(a) Actions that result in effective containment of spilled oil, as determined by the state on-scene coordinator (OSC).~~

~~(b) Actions that keep spilled oil from contacting the shoreline, as determined by the state on-scene coordinator (OSC).~~

~~(c) Actions that recover spilled nonpersistent oil from the water's surface within twenty-four hours of the oil first entering the water. Spilled oil that consists of a combination of spilled nonpersistent and spilled persistent oil will be considered a nonpersistent oil.~~

~~(d) Actions that recover spilled persistent oil from the surface of the water within forty-eight hours of the oil first entering the water.~~

~~(2)(a) The RDA committee may only reduce resource damages under this section based on documented recovery data submitted to ecology by the PLP. The RDA committee may request additional information to facilitate recovery~~

credit calculations. The data may be submitted on form number ECY-050-49, or other means that are acceptable to ecology. The submission may be electronic or other means that are acceptable to ecology. Measurement and documentation of recovered oil must be accomplished by the methods described in subsection (8) of this section, or as approved by the state OSC.

(b) Along with the data submitted by the PLP, the PLP must also submit:

(i) A statement signed and dated by the PLP or their representative, which states: "The data submitted are correct and accurate to the best of my knowledge."

(ii)(A) A statement signed by the state OSC that containment was either effective or not effective; and

(B) That spilled oil did or did not contact the shoreline;

(iii) A statement signed and dated by the state OSC that states: "I accept the information provided by the PLP and attest to the recovery data provided."

(c) The PLP must allow the state on-scene coordinator or their representative the opportunity to observe recovery credit calculation operations (storage, weighing, squeezing, and sampling).

(3)(a) When the conditions specified under subsection (1)(a), (b), and (c) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS_{AT} * Oil_{AT} * \text{total gallons spilled}) + (SVS_{MI} * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\}) + (SVS_{PER} * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-830(3).

(b) When the conditions specified under subsection (1)(a), (b), and (c) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS_i * Oil_{AT} * \text{total gallons spilled}) + (SVS_i * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\}) + (SVS_i * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-840(2).

(c) When the conditions specified under subsection (1)(a), (b), and (c) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2) is

modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

Damages (\$) =  $x * [(SVS * Oil_{AT} * \text{total gallons spilled}) + (SVS * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\}) + (SVS * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2)}$ .

(4)(a) When only the conditions specified under subsection (1)(c) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

Damages (\$) =  $x * [(SVS_{AT} * Oil_{AT} * \text{total gallons spilled}) + (SVS_{MI} * Oil_{MI} * \text{total gallons spilled}) + (SVS_{PER} * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-830(3)}$ .

(b) When only the conditions specified under subsection (1)(c) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

Damages (\$) =  $x * [(SVS_j * Oil_{AT} * \text{total gallons spilled}) + (SVS_j * Oil_{MI} * \text{total gallons spilled}) + (SVS_j * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-840(2)}$ .

(c) When only the conditions specified under subsection (1)(c) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2), is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

Damages (\$) =  $x * [(SVS * Oil_{AT} * \text{total gallons spilled}) + (SVS * Oil_{MI} * \text{total gallons spilled}) + (SVS * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2)}$ .

(5)(a) When the conditions specified under subsection (1)(a), (b), and (d) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

Damages (\$) =  $x * [(SVS_{AT} * Oil_{AT} * \text{total gallons spilled}) + (SVS_{MI} * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\}) + (SVS_{PER} * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-830(3)}$ .

(b) When the conditions specified under subsection (1)(a), (b), and (d) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

Damages (\$) =  $x * [(SVS_j * Oil_{AT} * \text{total gallons spilled}) + (SVS_j * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\}) + (SVS_j * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-840(2)}$ .

(c) When the conditions specified under subsection (1)(a), (b), and (d) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

Damages (\$) =  $x * [(SVS * Oil_{AT} * \text{total gallons spilled}) + (SVS * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\}) + (SVS * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$

$x = \text{appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2)}$ .

(6)(a) When only the conditions specified under subsection (1)(d) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the persistence components multiplied by the difference between the

total gallons spilled and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

Damages (\$) =  $x * [(SVS_{AT} * Oil_{AT} * \text{total gallons spilled}) + (SVS_{MI} * Oil_{MI} * \text{total gallons spilled}) + (SVS_{PER} * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$

$x$  = appropriate multiplier as determined in WAC 173-183-830(3).

(b) When only the conditions specified under subsection (1)(d) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

Damages (\$) =  $x * [(SVS_i * Oil_{AT} * \text{total gallons spilled}) + (SVS_j * Oil_{MI} * \text{total gallons spilled}) + (SVS_k * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$

$x$  = appropriate multiplier as determined in WAC 173-183-840(2).

(c) When only the conditions specified under subsection (1)(d) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2), is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

Damages (\$) =  $x * [(SVS * Oil_{AT} * \text{total gallons spilled}) + (SVS * Oil_{MI} * \text{total gallons spilled}) + (SVS * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$

$x$  = appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2).

(7) In no case shall the modifications to damages liability enumerated in subsections (3) through (6) of this section result in a reduction of damages to less than one dollar per gallon of oil spilled for those spills of less than one thousand gallons total, and three dollars per gallon of oil spilled for those spills of one thousand gallons or more in total.

(8)(a) To reduce resource damage liability, the PLP must provide oil recovery information to the OSC. The PLP may provide the information required in (b) of this subsection on form number ECY-050-49, or other means that are acceptable to ecology. The submission may be electronic or other means that are acceptable to ecology. Ecology may request additional information if it is needed to facilitate recovery credit calculations.

(b) The information provided must include:

(i) Date and time of the initial spill.

(ii) Date and time of when mechanical recovery operations ended, when oiled sorbents were removed from the water, and when oiled debris were removed from the water.

(iii) Name and contact information for the PLP.

(iv) Name of the contractors doing clean-up work, if different than the PLP.

(v) Spill source and location.

(vi) Oil type - Common name (gasoline, diesel, jet fuel, aviation fuel, kerosene, lube oil, hydraulic oil, transformer mineral oil, bunker oil, intermediate fuel oil, crude oil, asphalt, vegetable oil, other).

(vii) Specific gravity of the spilled oil and a determination of whether it is nonpersistent or persistent by definition (see WAC 173-183-100 (25) and (30)).

(viii) For persistent oils (WAC 173-183-100(30)), laboratory data that specifies the specific gravity of the oil.

(ix)(A) For mechanical or hand recovery operations, a record signed by the PLP's on-scene supervisor of the amount, in gallons, of water-oil mix, water, and oil in the storage device before recovery operations start. This record must be created prior to using the storage device for recovery operations. The amount of oil in each storage device used must be physically measured by measuring the thickness of oil on the water surface.

(B) To receive credit for oil mixed with water, including dissolved fractions or emulsified oil, oil must be measured by the collection of at least two representative samples of the water fraction from each storage device. The samples must be analyzed for oil content by a laboratory agreed upon by the OSC and PLP, and the results shared with the OSC.

(x) Verification that all oleophilic sorbent materials recovered from the water were stored separate from other spill generated wastes, were stored in double plastic bags to reduce leakage and evaporation, and were kept out of the rain as much as practicable.

(xi) For volumetric calculations of spent oleophilic sorbent materials, the PLP must provide the total gallons of mixed water-oil squeezed from the sorbents, the total water recovered, and total oil recovered. Oil remaining in the pads must then be calculated following (b)(xii) of this subsection.

(xii)(A) For gravimetric calculations of spent oleophilic sorbent materials, the PLP must provide the total weight of oiled sorbents, total weight of preoiled sorbents, total weight of recovered oil, and make the conversion to total gallons of oil recovered.

(B) Unless demonstrated otherwise by the PLP, the water content of spent oleophilic sorbent material is assumed to be twenty-five percent by weight.

(xiii) Verification that oiled debris removed from the water was collected with minimal water and stored separately from other spill generated wastes.

(xiv)(A) For recovery credit for oil recovered from debris on the water's surface, the PLP must take two representative samples of oiled debris from each area where debris is collected and have it analyzed for oil content by weight at a laboratory agreed upon by the OSC and PLP. The laboratory results must be shared with the OSC.

(B) The PLP must provide the weight of all the oiled debris recovered from the water from each collection area.

the total weight of the oil in the debris based on (b)(xiv)(A) of this subsection, and the total gallons of oil in the debris.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 12-17-084

### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 08-07—Filed August 15, 2012, 8:29 a.m.]

##### Original Notice.

Preproposal statement of inquiry was filed as WSR 11-22-024.

**Title of Rule and Other Identifying Information:** The department of ecology (ecology) proposes to adopt amendments to certain portions of the sediment management standards (SMS) regulations, chapter 173-204 WAC. This rule defines the requirements for managing contaminated sediments in Washington.

**Hearing Location(s):** Pacific Market Center, Suite 575, 6100 4th Avenue South, Seattle, WA 98105, on September 26, 2012, at 9:30 a.m. and 5:30 p.m.; at the Whatcom Community College, Heiner Theater, 237 West Kellogg Road, Bellingham, WA 98226, on September 27, 2012, at 5:30 p.m.; at the Department of Ecology, Headquarters Office, 300 Desmond Drive S.E., Lacey, WA 98503, on October 1, 2012, at 6:30 p.m.; at the CenterPlace Regional Event Center, Great Room, 2426 North Discovery Place, Spokane Valley, WA 99216, on October 3, 2012, at 5:30 p.m.; and at the Hampton Inn Richland, Columbia Pointe Ballroom, 486 Bradley Boulevard, Richland, WA 99352, on October 4, 2012, at 5:30 p.m.

Above is information on public hearings for the SMS rule. Ecology will be at each hearing location thirty minutes before the start of the hearing for an open house. Following the open house, there will be a short presentation from ecology followed by a question and answer (Q&A) session. Testimony will start at the conclusion of the Q&A session. The times listed below are when the presentation will begin.

**Date of Intended Adoption:** December 14, 2012.

**Submit Written Comments to:** Adrienne Dorrah, Department of Ecology, Toxics Cleanup Program, P.O. Box 47600, Olympia, WA 98504, e-mail RuleUpdate@ecy.wa.gov, fax (360) 407-7154, by October 15, 2012.

**Assistance for Persons with Disabilities:** Contact Adrienne Dorrah at (360) 407-7195 by September 15, 2012. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose of this rule proposal is to implement changes to the state's SMS for cleanup of contaminated sediment sites to clarify requirements to protect human health and the environment. The amendments proposed include:

- Integrating requirements for sediment cleanup actions in the SMS rule with requirements in the

Model Toxics Control Act (MTCA) cleanup regulation (chapter 173-340 WAC).

- Updating the SMS cleanup decision framework to address bioaccumulative chemicals.
- Proposing chemical and biological benthic criteria for freshwater sediments.
- Clarifying requirements for coordinating cleanup actions and source control measures.

**Reasons Supporting Proposal:** The current SMS rule does not include clear and implementable requirements for cleaning up sediment contaminated with bioaccumulative chemicals that pose a risk to both human health and the environment and freshwater sediment sites. These types of contaminated sediments is [are] complicated by uncertainties about protecting human health, the timing and feasibility of source control, how to incorporate background levels of contamination, and liability associated with historical releases. The lack of clear rule requirements has caused lengthy cleanup delays, inefficient use of available cleanup funds which can result in continued exposure to unhealthy levels of hazardous substances. Rule revisions are needed to provide clear, implementable, and predictable requirements for sediment cleanup actions to make the cleanup of contaminated sediments more efficient, effective, and protective.

**Statutory Authority for Adoption:** The Model Toxics Control Act, chapter 70.105D RCW, and the Water Pollution Control Act, chapter 90.48 RCW.

**Statute Being Implemented:** Chapter 70.105D RCW, Model Toxics Control Act.

Rule is not necessitated by federal law, federal or state court decision.

**Name of Proponent:** Department of ecology, governmental.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Chance Asher, Department of Ecology, Lacey, Washington, (360) 407-6914; and **Enforcement:** Jim Pendowski, Department of Ecology, Lacey, Washington, (360) 407-7177.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Executive Summary:** Ecology is proposing amendments to chapter 173-204 WAC, sediment management standards.

The proposed rule amendments:

- Allow for establishment of cleanup standards for sediment sites that are protective of human health and the environment. This includes:
  - o Establish a two tier framework incorporating human health and benthic criteria, a cleanup screening level (CSL) and sediment cleanup objective.
  - o Establishing the sediment cleanup level as the sediment cleanup objective, which may be adjusted upward based on certain criteria but may not exceed the CSL;
  - o Determining the sediment cleanup objective based on the highest of: Risk-based levels; natural background; or practical quantitation limit;

- o Determining the CSL based on the highest of risk-based levels; regional background; or practical quantitation limit.
- Incorporate background concentrations of contaminants - both "regional" and natural background. Allows for ecology to establish regional background level(s) for contaminants.
- Clarifies how ecology can establish a sediment cleanup unit - a subdivision of a sediment site for the purpose of expediting cleanup.
- Clarify information to be included in the remedial investigation/feasibility study for a sediment site.
- Use the CSL and the sediment cleanup objective to identify and assess the hazard of sites.
- Establish how risk-based levels will be set: Based on protection of human health; based on protection of benthic toxicity; based on protection of higher tropic level species; or based on other applicable state or federal laws.
  - o Describe how setting a risk-based level based on protection of human health will include an exposure parameter using a site specific fish consumption rate.
  - o Detail how to set a risk-based level based on protection of benthic community in freshwater sediments.
  - o Detail how to set a risk-based level based on protection of higher tropic level species.
- Clarify requirements for selection of cleanup actions for sediment sites.
- Clarify requirements governing establishment and monitoring of sediment recovery zones.

Ecology determined that the likely benefits of the proposed rule amendments exceed the costs, when including both qualitative and quantifiable costs and benefits. Moreover, while for many sites the proposed rule amendments will require compliance similar (or identical) to the baseline of current SMS and MTCA requirements, other sites will potentially save in characterization and cleanup costs, while still moving toward remediating to sufficient and achievable cleanup levels sooner.

Ecology calculated ratios of compliance cost to employment, examine the relative impacts of the proposed rule amendments on small versus large businesses. Ecology also considered the impacts of the proposed amendments on local governments and other small public entities, to meet the requirements in the Governor's Executive Order 10-06.<sup>1</sup> Ecology was not able to get sufficient data for other measures (sales, hours of labor) often used to identify a business's ability to cope with compliance costs for the representative set of affected businesses.

When comparing the per-employee costs of compliance with the proposed rule amendments, ecology found that the largest ten percent of businesses experience the lowest per-employee costs (up to \$1,060 per employee), and small businesses (with fifty or fewer employees) businesses experience the highest per-employee costs (\$190 to \$53 thousand).

There are a number of factors in toxics cleanup regulations that limit disproportionate impacts on small businesses, of compliance. While this rule making was limited in its

scope to include mitigating provisions, elements of the program that reduce disproportionate impacts on small businesses include:

- A remediation level that leaves hazardous substances at the site in concentrations above cleanup levels may be considered protective of human health and the environment.
- Ecology accepts a wide variety of financial assurance mechanisms.
- Ecology provides for technical consultations and assistance for independent remedial actions. Independent remediation is largely undertaken by small businesses, which are directly benefited by this provision.
- Providing a choice of methods for calculating cleanup levels allows businesses to maintain flexibility in business decisions relating to remediation costs.
- Assistance with remediation efforts is available through some state toxics control account funds. In addition, ecology specifically assists local governments through remedial action grants.
- Ecology can facilitate resource sharing during data collection activities related to monitoring.
- Ecology considers financial resources available to cleanup proponents for site remediation when deciding which cleanup proponents to pursue.
- Ecology has a provision establishing an administrative process for issuing agreed orders that will help to mitigate the impacts of the final rule on small business.
- Interim cleanup actions on a site may spread remediation costs over time, reducing the real (inflation-adjusted) cost of complete remediation.
- Ecology is funding some background sampling to ease the financial burden on small businesses.

While some of these rule components help to reduce costs for all businesses that take advantage of them within their other business decisions, they are likely to reduce small business costs by a larger percentage than for large businesses.

Based on the Washington state office of financial management's input-output model of the state economy, ecology calculated likely jobs outcomes under the proposed rule amendments, under various scenarios. The proposed rule amendments, over twenty years, could result in between:

- Loss of between fourteen and fifty-four full-time employees (FTEs; jobs for one year).
- Gain of between twenty-nine and one hundred twelve FTEs.

These job losses and gains occur across all industries in the state - not just those that must comply with the proposed rule amendments. Whether jobs are gained or lost depends on which industries incur the worst-case costs of compliance with the proposed rule (jobs lost in one industry complying, are gained in the industry they pay for services). How many jobs are gained or lost depends on the size of compliance costs incurred.

**Section 1: Introduction and Background:** Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule amendments to chapter 173-204 WAC are likely to have a disproportionate impact on small business. Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the: Background for the analysis of impacts on small business relative to other businesses; results of the analysis; and cost-mitigating action taken by ecology.

This document is intended to be read with the associated cost-benefit analysis (CBA) (Ecology Publication #12-09-051), which contains more in-depth discussion of the analyses, as well as references and appendices.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment - the way contaminated sediments would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal, state, and local levels.

#### Description of the Proposed Rule Amendments:

- Allow for establishment of cleanup standards for sediment sites that are protective of human health and the environment. This includes:
- Establish a two tier framework incorporating human health and benthic criteria, a CSL and sediment cleanup objective.
- Establishing the sediment cleanup level as the sediment cleanup objective, which may be adjusted upward based on certain criteria but may not exceed the CSL;
- Determining the sediment cleanup objective based on the highest of: Risk-based levels; natural background; or practical quantitation limit.
- Determining the CSL based on the highest of risk-based levels; regional background; or practical quantitation limit.
- Incorporate background concentrations of contaminants - both "regional" and natural background. Allows for ecology to establish regional background level(s) for contaminants.
- Clarifies how ecology can establish a sediment cleanup unit - a subdivision of a sediment site for the purpose of expediting cleanup.
- Clarify information to be included in the remedial investigation/feasibility study for a sediment site.
- Use the CSL and the sediment cleanup objective to identify and assess the hazard of sites.
- Establish how risk-based levels will be set: Based on protection of human health; based on protection of benthic toxicity; based on protection of higher tropic level species; or based on other applicable state or federal laws.
- Describe how setting a risk-based level based on protection of human health will include an exposure parameter using a site specific fish consumption rate.

- Detail how to set a risk-based level based on protection of benthic community in freshwater sediments.
- Detail how to set a risk-based level based on protection of higher tropic level species.
- Clarify requirements for selection of cleanup actions for sediment sites.
- Clarify requirements governing establishment and monitoring of sediment recovery zones.

Reasons for the Proposed Rule Amendments: The proposed rule amendments are necessary to:

- Allow for greater coordination of the sediment and upland portion of sites by harmonizing the SMS rule and the MTCA rule.
- Reduce the risk to human health and the environment by incentivizing cleaning up of high risk contaminated areas (site units).
- Establish cleanup level(s) for sites which will be achievable and protective of human health and the environment. This includes taking into account anthropogenic background contaminant concentrations (both natural and regional).
- Establish a clear path for making cleanup decisions using risk-based levels based on protection of human health, protection of benthic toxicity, and protection of higher tropic level species.
- Deal with inconsistent decision making and costly site characterization and investigation at freshwater sediment sites by providing for use of chemical and biological standards in setting a risk-based level based on protection of benthic community.

By establishing a clear path for management of sediment cleanup sites, from identification to the cleanup action decision, the proposed rule amendments will encourage quicker and more effective cleanup actions thus reducing human and environmental exposure to contaminants.

Regulatory Baseline: In most cases, the regulatory baseline is the existing rule. If there is no existing rule, the federal or local rule is the baseline. Sometimes there is no baseline because there is no regulation at any level of government, and yet other times, the baseline is for changes to other regulations (e.g., federal regulation is expected to be enacted before or just after the adopted rule; or a regulatory program would otherwise change or expire in the absence of the adopted rule).

The baseline is complex for the proposed SMS rule because there are multiple factors involved. Those factors are:

- Existing SMS rule (chapter 173-204 WAC).

The state law authorizing the SMS rule (chapter 70.105D RCW, MTCA). The state law requires the minimum cleanup standards for remedial actions to be at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws. Existing MTCA rule, chapter 173-340 WAC.

Ecology estimated the expected costs associated with the proposed amendments to the SMS rule. The baseline is the regulatory circumstances and most likely application in the

absence of the proposed rule amendments. The costs and benefits analyzed here are associated with the broad impacts of the proposed amendments, as they impact cleanup standards, site characterization, cleanup actions, and monitoring requirements.

Due to the levels of sediment contamination statewide, and the uncertainty in estimating discovery of new sediment cleanup sites (most identified sites are due to historic contamination and are likely already identified), ecology could not confidently quantify the number of future sites to be regulated by either the existing or proposed SMS rule. Instead of estimating costs and benefits statewide, ecology estimated the costs and benefits of the proposed rule amendments to different representative sites and geographies, including:

- Site characterization
- Puget Sound-wide analysis for site identification.
- Representative site analysis of an urban marine embayment.
- Representative case studies to calculate cleanup levels based on different fish consumption rates.
- Urban shoreline.
- Urban marine embayment.
- Rural marine embayment.
- Freshwater sediments standards for protection of the benthic community.
- Dredged material disposal analysis.
- Source control for liable persons.
- Cleanup timing and background concentrations.

For these representative calculations, ecology chose appropriate chemicals of concern that commonly drive human-health based sediment cleanups: Mercury, dioxin, and polycyclic aromatic hydrocarbons (cPAHs) [(PAHs)].

**Section 2: Compliance Costs:** Ecology estimated the impacts of the proposed rule on compliance costs, in the CBA (Ecology Publication number 12-09-051). This section summarizes overall compliance cost impacts estimated.

#### WHAT HAPPENS AT THE SITE OR EMBAYMENT LEVEL?

**Site Characterization:** Ecology estimated that the proposed rule amendments may result in reduced site-characterization costs for a representative site contaminated with bioaccumulative chemicals of concern, of approximately \$148 thousand per site. This cost savings results from reduced necessary sampling, and reduced core-sample depth. This is the cost reduction for a typical site, and some sites will experience no cost savings, while others will experience a larger cost savings.

**Sediment Cleanup at a Representative Embayment Site:** The proposed rule amendments may result in higher cleanup standards for some sites, as compared to the baseline. Ecology estimated the change in cleanup standards at a sediment site could save a maximum of \$2.4 million in cleanup and monitoring costs, based on an analysis of a representative embayment requiring sediment cleanup, and posing human health risk.

The cost savings for another real embayment could potentially be zero, but could also be larger than this. It would be zero in the case that site-specific attributes of a site drive the cleanup level down to the same level as under the baseline (e.g., in cases with limited regional concentrations).

**Sediment Cleanup at a Freshwater Sediment Site for Benthic Community Protection:** Ecology estimated that the proposed rule amendments may result in reduced site characterization costs for freshwater sites where the benthic community is impacted within a range of \$2,312 - \$60,387 thousand per site. This is the cost reduction for a typical site, and some sites will experience no cost savings, while others will experience a larger cost savings.

**Soil and Groundwater Cleanup on Upland Sites:** Ecology does not anticipate that the proposed SMS rule revisions will significantly impact requirements for soil and groundwater cleanup standards at MTCA sites that are adjacent to a river, lake, stream or bay.

Under the proposed rule revisions, the CSL requirements are similar to the Method C provisions in the current MTCA rule. However, the CSL may be higher than allowed under the baseline rule because regional background levels may exceed risk-based concentrations and analytical limits. In these situations, the site-specific sediment cleanup standard might be higher than allowed under the baseline rule.

Soil and ground water cleanup standards must be established at concentration[s] that prevent exceedances of sediment cleanup standards based on protecting human health, surface water, and sediment benthic communities. At a significant number of upland sites, surface water standards under MTCA will be protective of sediment.

**Analytical Costs for Evaluating Compliance:** Ecology estimated a possible cost increase for additional analysis for evaluating compliance at sediment sites, within a range of \$1.2 - \$4.6 million, over twenty years.

**Dredged Material for Marine Sediment:** Ecology also estimated additional dredging costs for analysis at an average of \$373,296 thousand for all proposed dredging projects over twenty years.

**Source Control:** Ecology estimated a possible cost increase for additional analysis at permitted effluent discharge sites in Puget Sound over the next twenty years, within a range of \$481,600 - \$2,889,600, only for those permittees that are also PLPs.

For dischargers that are not identified PLPs for a sediment cleanup site, ecology does not anticipate significant new permitting requirements near term for the majority of these facilities outside of the current permitting and TMDL efforts ecology is undertaking.

#### WHAT HAPPENS ON A BROADER SCALE?

**Puget Sound-wide Analysis for Site Identification:** The acreage and number of sites identified for sediment cleanup under the proposed rule may prospectively fall eleven to fourteen percent (in a representative embayment), or they may stay the same as under the baseline. Ecology estimated number of sites, cleanup acreage, and likely remediation plans including amounts of dredging, capping, and monitoring. Smaller quantities of each would likely be required for cleanup in example analyses for dioxin and mercury. The falling number of sites and acreage would scale the overall site-level or embayment-level benefits and costs discussed above.

**Statewide Impacts:** While ecology did not have adequate data to perform a similar analysis statewide, ecology believes a similar result would hold in other areas of the state.

The benefits and costs resulting from the proposed rule at a representative embayment would be further scaled to include other locations in the state. Since ecology believes the benefits of the proposed rule exceed the costs at the embayment-level (see above), scaled up for the state, this conclusion should hold.

Summary: Ecology chose to analyze the degree of disproportion in compliance-cost burden, using the highest possible increase in compliance costs. While it is not likely the case for all sites, it is possible in ecology's analysis, to find no change in compliance costs other than analytic costs supporting:

- Compliance evaluation.
- \$1.2 - \$4.6 million, across eighty-six sites.
- \$14 - [\$]53 thousand per site.
- Open-water disposal of dredged materials.
- \$373 thousand, across twenty projects.
- \$19 thousand per project site.
- Effluent permit compliance by PLPs.
- \$0.5 - \$3 million, across eighty-six permittees.
- \$6 - \$34 thousand per permittee site.

**Section 3: Quantification of Cost Ratios:** Ecology calculated the estimated per-facility costs to comply with the proposed rule amendments. Based on available data, estimation and forecasting was possible on a site-level or permittee-level calculation. This means cost estimates and ranges are for the average or typical site or permittee. This causes inherent estimation of disproportionate costs across differently-sized businesses. In this section, ecology summarizes compliance cost calculations (due to space constraints in this document, the full cost and benefit analyses are presented in the associated CBA, Ecology Publication #12-09-051).

Ecology estimated per-employee costs for each type of compliance cost, in the most conservative (costly) scenario, using the overall range of business sizes in industries historically and potentially involved in cleanup and effluent permitting. For each type of compliance cost, ecology calculated the cost-per-employee for one to fifty employees (the range for small businesses), and compared it to cost-per-employee for fifty to over one thousand employees (the range of employees for the largest ten percent of businesses in likely impacted industries).

Ecology found that the largest ten percent of businesses experience the lowest per-employee costs, and small businesses experience the highest per-employee costs, in the extremely conservative case of worst-case-scenario costs (no cost savings is experienced by ANY entity):

Compliance evaluation:

Small businesses: \$280 to \$53 thousand per employee

Largest ten percent of businesses: Up to \$1,060 per employee

Open-water disposal of dredged materials:

Small businesses: \$380 to \$19 thousand

Largest ten percent of businesses: Up to \$380 per employee

Effluent permit compliance by PLPs:

Small businesses: \$240 to \$12 thousand per employee

Largest ten percent of businesses: Up to \$240 per employee

**Section 4: Action Taken to Reduce Small Business Impacts:** Ecology had limited ability in this rule making to reduce the impacts specifically to small business, but in choosing the least burdensome means of facilitating compliance and protecting human health and the environment, ecology provided options that can help small businesses reduce their compliance costs by greater percentages.

Toxics cleanup regulations do, however, provide numerous forms of existing relief to small businesses:

- A remediation level that leaves hazardous substances at the site in concentrations above cleanup levels may be considered protective of human health and the environment.
- Ecology accepts a wide variety of financial assurance mechanisms.
- Ecology provides for technical consultations and assistance for independent remedial actions. Independent remediation is largely undertaken by small businesses, which are directly benefited by this provision.
- Providing a choice of methods for calculating cleanup levels allows businesses to maintain flexibility in business decisions relating to remediation costs.
- Assistance with remediation efforts is available through some state toxics control account funds.
- Ecology can facilitate resource sharing during data collection activities related to monitoring.
- Ecology considers financial resources available to cleanup proponents for site remediation when deciding which cleanup proponents to pursue.
- Ecology has a provision establishing an administrative process for issuing agreed orders that will help to mitigate the impacts of the final rule on small business.
- Interim cleanup actions on a site may spread remediation costs over time, reducing the real (inflation-adjusted) cost of complete remediation.
- Ecology is funding some background sampling to ease the financial burden on small businesses.
- Ecology did not expand on existing provisions that assist small businesses to comply with the cleanup regulations.

**Section 5: Small Business and Government Involvement:** Ecology has involved small businesses and local governments (as well as large businesses and other interested parties) during the rule-making process.

Web Page: Ecology developed a dedicated web page that described the purpose and status of the rule making (<http://www.ecy.wa.gov/programs/tcp/regs/2009MTCA/mtcaAmend.html>). Ecology posted all decisions, announcements, issue papers, and advisory group information on this page. Ecology also used to [the] web page to encourage and accept comments, and allow individuals, groups, and businesses to sign up for newsletter updates on the rule making.

Preliminary Rule Language: Ecology posted preliminary new rule language for public comment (in addition to the public process required by the Administrative Procedure Act, chapter 34.05 RCW, and Regulatory Fairness Act

(RFA), chapter 19.85 RCW). Ecology then collected, considered, and reposted <http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/adv-comm/sms-rule-comments.html> public comments received.

Meetings and Consultations: Ecology consulted with stakeholders, including small business representatives, individually or in groups at different points to discuss the issues addressed in the rule making, other ecology rule makings, and the agency's general policy direction. These stakeholders included the Association of Washington Businesses, as well as local governments.

1125	3117	3241	3272	3325	3364	4215	4413	4911	5511
1151	3121	3251	3274	3328	3365	4221	4471	4922	5622
2123	3131	3253	3312	3329	3366	4222	4512	4931	5629
2211	3211	3254	3313	3334	3399	4225	4543	5141	7121
2213	3219	3255	3315	3339	4211	4226	4821	5142	7139
2362	3221	3259	3321	3344	4212	4227	4832	5211	8111
3111	3222	3261	3323	3353	4213	4247	4851	5231	8114
3114	3231	3271	3324	3359	4214	4412	4883	5313	

**Section 7: Impact on Jobs:** Ecology used the Washington state office of financial management's 2002 Washington input-output model.<sup>3</sup> The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output.

The proposed rule will result in transfers of money between industries; businesses complying with the proposed rule amendments will pay businesses providing sampling and testing support. Ecology assumed sampling and testing would occur in-state.

Ecology estimated that the proposed rule amendments, if creating the worst-case scenario of increased compliance costs for analytic work supporting compliance verification, dredging disposal, and effluent permit compliance. The proposed rule amendments, over twenty years, could result in between:

- Loss of between fourteen and fifty-four full-time employees (FTEs; jobs for one year).
- Gain of between twenty-nine and one hundred twelve FTEs.

These job losses and gains occur across all industries in the state - not just those that must comply with the proposed rule amendments. Whether jobs are gained or lost depends on which industries incur the worst-case costs of compliance with the proposed rule (jobs lost in one industry complying, are gained in the industry they pay for services). How many jobs are gained or lost depends on the size of compliance costs incurred.

<sup>1</sup>[http://www.governor.wa.gov/news/Executive\\_Order\\_10-06.pdf](http://www.governor.wa.gov/news/Executive_Order_10-06.pdf).

<sup>2</sup>North American Industry Classification System (NAICS) codes have largely taken the place of Standard Industry Classification (SIC) codes in the categorization of industries.

<sup>3</sup>See the Washington state office of financial management's site for more information on the input-output model. <http://www.ofm.wa.gov/economy/io/2002/default.asp>.

A copy of the statement may be obtained by contacting Adrienne Dorrah, Department of Ecology, P.O. Box 47600,

**Section 6: NAICS Codes of Impacted Industries:** The table below lists NAICS codes for industries ecology expects could be impacted by the proposed rule amendments.<sup>2</sup> These are the four-digit level industry classifications of existing PLPs and effluent permit holders. Ecology cannot be certain that businesses in all of the industries listed would incur additional costs under the proposed rule, or that they would necessarily be disproportionate across business sizes, but chose to overestimate the breadth of affected industries to be more certain that none were excluded.

Olympia, WA 98504, phone (360) 407-7195, fax (360) 407-7154, e-mail [adrienne.dorrah@ecy.wa.gov](mailto:adrienne.dorrah@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Adrienne Dorrah, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, phone (360) 407-7195, fax (360) 407-7154, e-mail [adrienne.dorrah@ecy.wa.gov](mailto:adrienne.dorrah@ecy.wa.gov).

August 13, 2012  
Polly Zehm  
Deputy Director

**AMENDATORY SECTION** (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-100 Authority and purpose.** (1) This chapter is promulgated under the authority of chapter 90.48 RCW, the Water Pollution Control Act; chapter 70.105D RCW, the Model Toxics Control Act; chapter 90.70 RCW, the Puget Sound Water Quality Authority Act; chapter 90.52 RCW, the Pollution Disclosure Act of 1971; chapter 90.54 RCW, the Water Resources Act of 1971; and chapter 43.21C RCW, the state Environmental Policy Act, to establish marine, low salinity and freshwater surface sediment management standards for the state of Washington.

(2) The purpose of this chapter is to reduce and ultimately eliminate adverse effects on biological resources and significant health threats to humans from surface sediment contamination by:

- (a) Establishing standards for the quality of surface sediments;
- (b) Applying these standards as the basis for management and reduction of pollutant discharges; and
- (c) Providing a management and decision process for the cleanup of contaminated sediments.

(3) Part III, Sediment quality standards of this chapter provides chemical concentration criteria, biological effects criteria, human health criteria, and other toxic, radioactive,

biological, or deleterious substances criteria which identify surface sediments that have no adverse effects, including no acute or chronic adverse effects on biological resources and no significant health risk to humans, as defined in this regulation. The sediment quality standards provide a regulatory and management goal for the quality of sediments throughout the state.

(4) The sediment criteria of WAC 173-204-320 through 173-204-340 shall constitute surface sediment quality standards and be used to establish an inventory of surface sediment sampling stations where the sediments samples taken from these stations are determined to pass or fail the applicable sediment quality standards.

(5) Part IV, Sediment source control standards of this chapter shall be used as a basis for controlling the effects of point and nonpoint source discharges to sediments through the National Pollutant Discharge Elimination System (NPDES) federal permit program, state water quality management permit programs, issuance of administrative orders or other means determined appropriate by the department. The source control standards establish discharge sediment monitoring requirements and criteria for establishment and maintenance of sediment impact zones.

(6) Part V, Sediment cleanup standards of this chapter establishes administrative procedural requirements and criteria to identify, screen, rank and prioritize, and cleanup contaminated surface sediment sites. The sediment cleanup standards of WAC 173-204-500 through 173-204-590 shall be used pursuant to ~~((authorities))~~ authority established under chapter ~~((s 90.48 and))~~ 70.105D RCW.

(7) This chapter establishes and defines a goal of minor adverse effects as the maximum level of sediment contamination allowed in sediment impact zones under the provisions of Part IV, Sediment source control standards and as the cleanup screening levels for identification of sediment cleanup sites and as the minimum cleanup levels to be achieved in all cleanup actions under Part V, Sediment cleanup standards.

(8) Local ordinances establishing requirements for the designation and management of marine, low salinity and freshwater sediments shall not be less stringent than this chapter.

Note: All codes, standards, statutes, rules or regulations cited in this chapter are available for inspection at the Department of Ecology, P.O. Box 47703, Olympia, Washington 98504-7703.

**AMENDATORY SECTION** (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-110 Applicability.** (1) The sediment quality standards of WAC 173-204-300 through 173-204-315, and 173-204-350, and the sediment cleanup standards of WAC 173-204-500 through 173-204-580 shall apply to all surface sediments.

(2) The sediment quality standards of WAC 173-204-320, 173-204-330, and 173-204-340 and the applicable sediment cleanup standards of WAC 173-204-560 shall apply to marine, low salinity and freshwater surface sediments, respectively.

(3) The source control standards of WAC 173-204-400 through 173-204-420 shall apply to each person's actions which exposes or resuspends surface sediments which exceed, or otherwise cause or potentially cause surface sediments to exceed, the applicable standards of WAC 173-204-320 through 173-204-340.

(4) The sediment recovery zone standards of WAC 173-204-590 shall apply to each person's cleanup action decision made pursuant to WAC 173-204-570 and 173-204-580 where the selected cleanup action leaves in place marine, low salinity, or freshwater sediments that exceed the applicable sediment ~~((quality))~~ cleanup standards of WAC ~~((173-204-320 through 173-204-340))~~ 173-204-560.

(5) The sediment quality standards of WAC 173-204-320 through 173-204-340 shall not apply:

(a) Within a sediment impact zone as authorized by the department under WAC 173-204-415; or

(b) Within a sediment recovery zone as authorized by the department under WAC 173-204-590; or

(c) To particulates suspended in the water column; or

(d) To particulates suspended in a permitted effluent discharge.

(6) Nothing in this chapter shall constrain the department's authority to make appropriate sediment management decisions on a case-specific basis using best professional judgment and latest scientific knowledge for cases where the standards of this chapter are reserved or standards are not available.

**AMENDATORY SECTION** (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-130 Administrative policies.** The department shall implement this chapter in accordance with the following policies:

(1) The department shall seek to implement, and as necessary modify this chapter to protect biological resources and human health consistent with WAC 173-204-100(2). To implement the intent of this subsection, the department shall use methods that accurately reflect the latest scientific knowledge consistent with the definitions contained in WAC 173-204-200 ~~((14) and (15))~~, as applicable.

(2) At the interface between surface sediments, groundwater or surface water, the applicable standards shall depend on which beneficial use is or could be adversely affected, as determined by the department. If beneficial uses of more than one resource are affected, the most restrictive standards shall apply.

(3) It shall be the goal of the department to modify this chapter so that methods such as confirmatory biological tests, sediment impact zone models, use of contaminated sediment site ranking models, etc., continue to accurately reflect the latest scientific knowledge as established through ongoing validation and refinement.

(4) Any person or the department may propose an alternate technical method to replace or enhance the application of a specific technical method required under this chapter. Using best professional judgment, the department shall provide advance review and approval of any alternate technical method proposed prior to its application. Application and use

of alternate technical methods shall be allowed when the department determines that the technical merit of the resulting decisions will improve the department's ability to implement and meet the intent of this chapter as described in WAC 173-204-100(2), and will remain consistent with the scientific intent of definitions contained in WAC 173-204-200 (~~((14) and (15))~~). The department shall maintain a record of the department's decisions concerning application for use of alternate technical methods pursuant to this subsection. The record shall be made available to the public on request.

(5) Intergovernmental coordination. The department shall ensure appropriate coordination and consultation with federally recognized Indian tribes and local, state, and federal agencies to provide information on and to implement this chapter.

(6) The department shall conduct an annual review of this chapter, and modify its provisions every three years, or as necessary. Revision to this chapter shall be made pursuant to the procedures established within chapter 34.05 RCW, the Administrative Procedure Act.

(7) Review of scientific information. When evaluating this chapter for necessary revisions, the factors the department shall consider include:

(a) New or additional scientific information which is available relating surface sediment chemical quality to acute or chronic adverse effects on biological resources as defined in WAC 173-204-200 (~~((1))~~) (2) and (~~((7))~~) (12);

(b) New or additional scientific information which is available relating human health risk to marine, low salinity, or freshwater surface sediment chemical contaminant levels;

(c) New or additional scientific information which is available relating levels of other toxic, radioactive, biological and deleterious substances in marine, low salinity, or freshwater sediments to acute or chronic adverse effects on biological resources, or to a significant health risk to humans;

(d) New state or federal laws which have established environmental or human health protection standards applicable to surface sediment; or

(e) Scientific information which has been identified for addition, modification or deletion by a scientific review process established by the department.

(8) Public involvement and education. The goal of the department shall be to provide timely information and meaningful opportunities for participation by the public in the annual review conducted by the department under subsection (6) of this section, and any modification of this chapter. To meet the intent of this subsection the department shall:

(a) Provide public notice of the department's decision regarding the results of its annual review of this chapter, including:

(i) The department's findings for the annual review factors identified in subsection (7) of this section;

(ii) The department's decision regarding the need for modification of this chapter based on its annual review; and

(iii) Identification of a time period for public opportunity to comment on the department's findings and decisions pursuant to this subsection.

(b) Provide public notice by mail or by additional procedures determined necessary by the department which may include:

(i) Newspaper publication;

(ii) Other news media;

(iii) Press releases;

(iv) Fact sheets;

(v) Publications;

(vi) Any other method as determined by the department.

(c) Conduct public meetings as determined necessary by the department to educate and inform the public regarding the department's annual review determinations and decisions.

(d) Comply with the rule making and public participation requirements of chapter 34.05 RCW, the Administrative Procedure Act, for any revisions to this chapter.

(9) Test sediments evaluated for compliance with the sediment quality standards of WAC 173-204-320 through 173-204-340 and/or the sediment impact zone maximum criteria of WAC 173-204-420 and/or the sediment cleanup (~~(screening levels criteria)~~) standards of WAC (~~(173-204-520)~~) 173-204-560 shall be sampled and analyzed using the Puget Sound Protocols or other methods approved by the department. Determinations made pursuant to this chapter shall be based on sediment chemical and/or biological data that were developed using an appropriate quality assurance/quality control program, as determined by the department.

(10) The statutory authority for decisions under this chapter shall be clearly stated in the decision documents prepared pursuant to this chapter. The department shall undertake enforcement actions consistent with the stated authority under which the action is taken. The process for judicial review of these decisions shall be pursuant to the statutes under which the action is being taken.

(11) When the department identifies this chapter as an applicable, or relevant and appropriate requirement for a federal cleanup action under the Comprehensive Environmental Response, Compensation and Liability Act, the department shall identify the entire contents of this chapter as the appropriate state requirement.

AMENDATORY SECTION (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-200 Definitions.** In cases where a definition does not exist in this chapter, the definitions in chapter 173-340 WAC will apply unless the context indicates otherwise. For the purpose of this chapter, the following definitions shall apply:

(1) "Active cleanup action" means those engineered controls requiring physical construction to meet sediment cleanup standards. Active cleanup actions include dredging, capping, treatment, and enhanced natural recovery. Passive cleanup actions such as monitored natural recovery and institutional controls are not active cleanup actions for purposes of sediment cleanup only.

(2) "Acute" means measurements of biological effects using surface sediment bioassays conducted for time periods that are relatively short in comparison to the life cycle of the test organism. Acute effects may include mortality, larval abnormality, or other endpoints determined appropriate by the department.

~~((2))~~ (3) "Amphipod" means crustacean of the Class Amphipoda, e.g., Rhepoxynius abronius, Ampelisca abdita, ~~((æ))~~ Eohaustorius estuarius, or Hyalella azteca.

(4) "Anthropogenic" means created by humans or caused by human activity.

(5) "Applicable local, state and federal laws" means all legally applicable requirements and those requirements that the department determines, based on the criteria in WAC 173-340-710, are relevant and appropriate requirements.

~~((3))~~ (6) "Appropriate biological tests" means only tests designed to measure directly, or through established predictive capability, biologically significant adverse effects to the established or potential benthic or aquatic resources at a given location, as determined by rule by the department.

~~((4))~~ (7) "Beneficial uses" means uses of waters of the state which include ~~((but are not limited to))~~ use for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, recreation, generation of electric power, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.

~~((5))~~ (8) "Beneficial reuse" means reuse of sediment, or a separated portion of the sediment (such as the gravel fraction), with low levels of contamination that utilizes the physical characteristics and properties of the sediment to replace another natural uncontaminated material without requiring use of engineered or institutional controls to protect human health or the environment. Examples of beneficial reuse include habitat restoration or enhancement, strip mine reclamation, landfill cover material, aggregate in asphalt or concrete, or use of organic fines in manufactured topsoil.

(9) "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface sediments of the state as approved by the department. BMPs ~~((also))~~ include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage.

~~((6))~~ (10) "Bioassay" means a test procedure or biological assessment that measures the response of living plants, animals, or tissues to a sediment sample.

~~((7))~~ (11) "Biologically active zone" means the sediment depth determined by the department where the species critical to the function, diversity, and integrity of the benthic community are located. Metrics such as biomass and abundance may be used to define the vertical extent of the biologically active zone. These species can include endemic and keystone animals, plants, or other species. Abiotic factors such as groundwater upwelling, salt wedges, water temperature, dissolved oxygen, and hyporheic flow can affect the vertical distribution of organisms.

(12) "Chronic" means measurements of biological effects using sediment bioassays conducted for, or simulating, prolonged exposure periods of not less than one complete life cycle, evaluations of indigenous field organisms for long-term effects, assessment of biological effects resulting from bioaccumulation and biomagnification, and/or extrapolated values or methods for simulating effects from pro-

longed exposure periods. Chronic effects may include mortality, reduced growth, impaired reproduction, histopathological abnormalities, adverse effects to birds and mammals, or other endpoints determined appropriate by the department.

~~((8))~~ (13) "Cleanup action" means any actions taken at a sediment site or sediment cleanup unit to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove contaminated sediment to achieve sediment cleanup standards.

(14) "Cleanup screening level" means the maximum allowed concentration of any contaminant and level of biological effects permissible at the site or sediment cleanup unit per procedures in WAC 173-204-560(4) after completion of the cleanup action. Cleanup screening levels are also used to identify and assess the hazard of sites under WAC 173-204-510 and 173-204-520.

(15) "Contaminant" means any hazardous substance or other toxic, radioactive, biological, or deleterious substance that does not occur naturally or occurs at greater than natural background levels.

(16) "Contaminated sediment" means ~~((surface))~~ sediments ~~((designated under the procedures of WAC 173-204-340 as))~~ exceeding the applicable sediment quality standards ~~((æ))~~ in WAC 173-204-320 through 173-204-340 or the applicable criteria in WAC 173-204-560.

~~((9))~~ (17) "Control sediment sample" means a surface sediment sample which is relatively free of contamination and is physically and chemically characteristic of the area from which bioassay test animals are collected. Control sediment sample bioassays provide information concerning a test animal's tolerance for stress due to transportation, laboratory handling, and bioassay procedures. Control sediment samples cannot exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 or the applicable criteria in WAC 173-204-560.

~~((10))~~ (18) "Department" means the department of ecology.

~~((11))~~ (19) "Enhanced natural recovery" means a remedy that uses human intervention to accelerate the process of natural recovery. An example of enhanced natural recovery is the placement of a thin clean layer of sediment over an area of contaminated sediment to naturally mix with the contaminated sediment and reduce the contaminant concentrations or toxicity followed by a period of monitoring to determine the effectiveness.

(20) "Freshwater sediments" means surface sediments in which the sediment pore water contains less than or equal to 0.5 parts per thousand salinity.

~~((12))~~ (21) "Include" means included, but not limited to.

(22) "Low salinity sediments" means surface sediments in which the sediment pore water contains greater than 0.5 parts per thousand salinity and less than 25 parts per thousand salinity.

~~((13))~~ (23) "Marine finfish rearing facilities" ~~((shall))~~ means those private and public facilities located within state waters where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

~~((14))~~ (24) "Marine sediments" means surface sediments in which the sediment pore water contains 25 parts per thousand salinity or greater.

~~((15))~~ (25) "Minor adverse effects" means a level of effects that:

(a) Has been determined by rule by the department, except in cases subject to WAC 173-204-110(6); and

(b) Meets the following criteria:

(i) An acute or chronic adverse effect to biological resources as measured by a statistically and biologically significant response relative to reference in no more than one appropriate biological test as defined in WAC 173-204-200~~((3))~~ (6); or

(ii) A statistically and biologically significant response that is significantly elevated relative to reference in any appropriate biological test as defined in WAC 173-204-200~~((3))~~ (6); or

(iii) Biological effects per (b)(i) or (ii) of this subsection as predicted by exceedance of an appropriate chemical or other deleterious substance standard, except where the prediction is overridden by direct biological testing evidence pursuant to (b)(i) and (ii) of this subsection; and

(c) Does not result in significant human health risk as predicted by exceedance of an appropriate chemical, biological, or other deleterious substance standard.

~~((16))~~ (26) "Monitored natural recovery" means a form of natural recovery that includes regular monitoring of sediment quality, tissue, and biota to assess the effectiveness of natural recovery to restore sediment quality.

(27) "Natural background" means the concentration of a hazardous substance consistently present in the environment that has not been influenced by localized human activities. For example, several metals and radionuclides naturally occur in the bedrock, sediment, and soil of Washington state due solely to the geologic processes that formed these materials and the concentration of these hazardous substances would be considered natural background. Also, low concentrations of some particularly persistent organic compounds such as polychlorinated biphenyls (PCBs) can be found in surficial soils and sediment throughout much of the state due to global distribution of these hazardous substances. These low concentrations would be considered natural background. Similarly, concentrations of various radionuclides that are present at low concentrations throughout the state due to global distribution of fallout from bomb testing and nuclear accidents would be considered natural background.

(28) "Natural recovery" means physical, chemical or biological processes that act, without human intervention, to reduce the toxicity or concentration of contaminated sediment. The most common form of natural recovery is the natural deposition of a layer of clean sediment over an area of contaminated sediment resulting in burial of contaminated sediment below the biologically active zone. The natural process of sediment mixing, and degradation of some contaminants, such as polycyclic aromatic hydrocarbons, can also contribute to natural recovery.

(29) "No adverse effects" means a level of effects that:

(a) Has been determined by rule by the department, except in cases subject to WAC 173-204-110(6); and

(b) Meets the following biological criteria:

(i) No acute or chronic adverse effects to biological resources as measured by a statistically and biologically significant response relative to reference in any appropriate biological test as defined in WAC 173-204-200~~((3))~~ (6); and

(ii) No acute or chronic adverse biological effect per (b)(i) of this subsection as predicted by exceedance of an appropriate chemical or other deleterious substance standard, except where the prediction is overridden by direct biological testing evidence pursuant to (b)(i) of this subsection; and

(iii) Does not result in significant human health risk as predicted by exceedance of an appropriate chemical, biological, or other deleterious substance standard.

~~((17))~~ (30) "Nonanthropogenically affected" means not affected by humans or caused by human activities.

(31) "Other toxic, radioactive, biological, or deleterious substances" means contaminants which are not specifically identified in the sediment quality standards chemical criteria of WAC 173-204-320 through 173-204-340 (e.g., organic debris, tributyltin, DDT, etc.).

~~((18))~~ (32) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, ~~((industry, private corporation, port district, special purpose district, irrigation district,))~~ unit of local government, state government agency, federal government agency, or Indian tribe~~(, or any other entity whatsoever)~~.

~~((19))~~ (33) "Point of compliance" means the locations within a site or sediment cleanup unit where sediment cleanup levels must be met.

(34) "Practicable" means able to be completed in consideration of environmental effects, technical feasibility and cost.

~~((20))~~ (35) "Practical quantitation limit" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions, using department approved methods. When the limit for an analytical method is higher than the concentrations based on protection of human health or the environment, the department may require the use of another method to lower the practical quantitation limit.

(36) "Puget Sound basin" or "Puget Sound" means:

(a) Puget Sound south of Admiralty Inlet, including Hood Canal and Saratoga Passage;

(b) The waters north to the Canadian border, including portions of the Strait of Georgia;

(c) The Strait of Juan de Fuca south of the Canadian border; and

(d) All the lands draining into these waters as mapped in water resources inventory areas numbers 1 through 19, set forth in water resources management program established pursuant to the Water Resources Act of 1971, chapter 173-500 WAC.

~~((21))~~ (37) "Puget Sound protocols" means *Puget Sound Estuary Program, 1986. As amended. Recommended Protocols for Measuring Selected Environmental Variables in Puget Sound, U.S. Environmental Protection Agency, Region 10, Seattle, WA (looseleaf)*.

~~((22))~~ (38) "Regional background" means the concentration of a contaminant within a department-defined geographic area that is primarily attributable to diffuse nonpoint

sources, such as atmospheric deposition or storm water, not attributable to a specific source or release. Regional background is generally expected to be greater than or equal to natural background, and less than area background as that term is defined in WAC 173-340-200.

(39) "Reference sediment sample" means a surface sediment sample which serves as a laboratory indicator of a test animal's tolerance to important natural physical and chemical characteristics of the sediment, e.g., grain size, organic content. Reference sediment samples represent the nonanthropogenically affected background surface sediment quality of the sediment sample. Reference sediment samples cannot exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 or the applicable criteria of WAC 173-204-560.

~~((23))~~ (40) "Sediment" means particulate matter settled or present as particles on the bed or bottom of a body of water to which biota or humans may potentially be exposed, and the surface water is present in the water body for a minimum of six contiguous weeks on an annual basis and the sediment is located at or below the ordinary high water mark. Sediment includes particulate matter located in the biologically active zone or exposed to the water column by human activity (e.g., dredging), pore water flux, or other hydrological or natural action.

(41) "Sediment cleanup level" means the concentration or level of biological effects for a contaminant in sediment that is determined by the department to be protective of human health and the environment under the authority of chapter 70.105D RCW. The sediment cleanup level is established in accordance with the requirements in WAC 173-204-560(2).

(42) "Sediment cleanup objective" means the goal for protection of human health and the environment and is established under the authority of chapter 70.105D RCW. The sediment cleanup objective is established in accordance with the requirements in WAC 173-204-560(3). Sediment cleanup objectives are also used to identify and assess the hazard of sites under WAC 173-204-510 and 173-204-520.

(43) "Sediment cleanup standard" means a department approved chemical concentration, or level of biological effects, in sediment that must be met within a site or sediment cleanup unit. Establishing sediment cleanup standards requires specification of the following: The concentration or level of biological effects for a contaminant in sediment that is determined by the department to be protective of human health and the environment ("sediment cleanup levels"); the location on the site or sediment cleanup unit where those sediment cleanup levels must be attained ("points of compliance"); and additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site. These requirements are specified in applicable state and federal laws and are generally established in conjunction with the selection of a specific cleanup action.

(44) "Sediment impact zone" means an area where the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 are exceeded due to ongoing permitted or otherwise authorized wastewater, storm water, or nonpoint source discharges and authorized by the department within a

federal or state wastewater or storm water discharge permit, or other formal department authorization.

~~((24))~~ (45) "Sediment quality standard" means chemical concentration criteria, biological effects criteria, other toxic, radioactive, biological, or deleterious substances criteria, and nonanthropogenically affected sediment quality criteria which are used to identify sediments that have no adverse effects on biological resources per procedures in WAC 173-204-320 through 173-204-340.

(46) "Sediment recovery zone" means an area ((where)) established by the department within a site or sediment cleanup unit where the department has determined cleanup actions cannot achieve the applicable sediment ((quality)) cleanup standards ((of WAC 173-204-320 through 173-204-340 are exceeded as a result of historical discharge activities, and authorized by the department as a result of a cleanup action decision)) within ten years after the start of the cleanup action. Sediment recovery zones must meet the requirements in WAC 173-204-590 and be authorized by the department under WAC 173-204-580.

~~((25))~~ (47) "~~(Site)~~ Sediment cleanup unit~~(s)~~" means discrete subdivision~~(s)~~ of ((an individual contaminated)) a sediment site ((that are being evaluated)) designated by the department for the purpose of ((establishing cleanup standards)) expediting cleanups. ((Site units are based on consideration of)) A sediment cleanup unit may be established based on unique ((toational)) chemical concentrations or parameters, environmental, spatial, or contaminant source characteristics, or other ((conditions)) methods determined appropriate by the department, e.g., development related cleanups, cleanup under piers, cleanup in eelgrass beds, and cleanup in navigational lanes.

~~((26))~~ (48) "Surface sediments" ~~((or "sediment(s)"))~~ means settled particulate matter sediment~~(s)~~ located in the ((predominant)) biologically active ((aquatic)) zone~~(s)~~ or exposed to the water column~~(s)~~. Sediment~~(s)~~ also includes settled particulate matter exposed by human activity (e.g., dredging) to the biologically active aquatic zone or to the water column.

~~((27))~~ by human activity (e.g., dredging), pore water flux, or other hydrological or natural action.

(49) "Technically possible" means capable of being designed, constructed and implemented in a reliable and effective manner, regardless of cost.

(50) "Test sediment" means a sediment sample that is evaluated for compliance with the sediment quality standards of WAC 173-204-320 through 173-204-340 ((and/or)), the sediment impact zone maximum criteria of WAC 173-240-420, ((and/or)) the ((cleanup screening levels)) applicable criteria of WAC ((173-204-520)) 173-204-560.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-310 Sediment quality standards designation procedures.** Any person may use these procedures to determine a sediment's designation using the applicable sediment quality standards of WAC 173-204-320 through 173-204-340. Any person who designates test sediments using the

procedures of this section shall meet the sampling and testing plan requirements of WAC 173-204-600 and records management requirements of WAC 173-204-610. Test sediments designated using the procedures of this section shall be sampled and analyzed using the Puget Sound protocols or other methods approved by the department, and shall use an appropriate quality assurance/quality control program, as determined by the department. A sediment sample that passes the initial designation procedures is designated as complying with the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, until such time as any person or the department confirms the sediment designation as failing the applicable sediment quality standards of WAC 173-204-320 through 173-204-340. A sediment sample that fails the initial designation procedures is designated as not complying with the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, until such time as any person or the department confirms the sediment designation as passing the applicable sediment quality standards of WAC 173-204-320 through 173-204-340. A sediment sample that passes or fails the confirmatory designation procedures is designated as such under the procedures of WAC 173-204-310. Sediments shall be designated with the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 as follows:

(1) Initial designation. Sediments that have been chemically analyzed for the applicable chemical concentration criteria of WAC 173-204-320 through 173-204-340 shall be designated as follows:

(a) Sediments with chemical concentrations equal to or less than all the applicable chemical and human health criteria are designated as having no adverse effects on biological resources, and not posing a significant health threat to humans, and pass the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(b) Sediments with chemical concentrations which exceed any one applicable chemical or human health criterion in WAC 173-204-320 through 173-204-340 are designated as having adverse effects on biological resources or posing significant human health threats, and fail the sediment quality standards of WAC 173-204-320 through 173-204-340, pending confirmatory designation.

(2) Confirmatory designation. Any person or the department may confirm the designation of sediments which have either passed or failed initial designation procedures listed in subsection (1) of this section using the applicable biological testing of WAC 173-204-315, as required below. Sediment samples that pass all the required confirmatory biological tests are designated as passing the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, notwithstanding the sediment's previous initial designation under subsection (1) of this section. Any sediment sample which fails any one of the required confirmatory biological tests shall be designated as failing the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, notwithstanding the sediment's previous initial designation under subsection (1) of this section. The confirmatory biological test standards are described below.

(a) To confirm the designation of a sediment which either passed or failed any applicable chemical concentration

criterion established in WAC 173-204-320 through 173-204-340, the sediment shall be tested for:

(i) Two of the acute effects biological tests described in the applicable standards of WAC 173-204-315; and

(ii) One of the chronic effects biological tests described in the applicable standards of WAC 173-204-315.

(b) Sediments with chemical concentrations which either passed or failed any applicable human health criterion of WAC 173-204-320 through 173-204-340 shall be eligible for confirmatory designation as follows: Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(3) Initial and confirmatory designation of sediments which contain other toxic, radioactive, biological, or deleterious substances. Sediments which contain other toxic, radioactive, biological, or deleterious substances, as defined in WAC 173-204-200(~~((+6))~~) (31), shall be designated by the department using the following procedures.

(a) The department shall:

(i) Identify individual contaminants of concern;

(ii) Identify appropriate and practicable sampling and analysis methodologies;

(iii) Identify test interpretation standards for initial and confirmatory designation; and

(iv) Identify acceptable levels of sediment contamination for sediments which contain other toxic, radioactive, biological, or deleterious substances.

(b) Where sediment containing other toxic, radioactive, biological or deleterious substances may also be contaminated by chemicals identified in WAC 173-204-320 through 173-204-340, the department shall require application of the appropriate tests and standards of WAC 173-204-320 through 173-204-340, as determined by the department, in addition to any requirements developed pursuant to (a) of this subsection.

(c) The department may use all or some of the sediment biological tests of WAC 173-204-320 through 173-204-340 to designate sediments with other toxic, radioactive, biological or deleterious substances in cases where those tests are technically appropriate, as determined by the department.

**AMENDATORY SECTION** (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-320 Marine sediment quality standards.** (1) Goal and applicability.

(a) The sediment quality standards of this section shall correspond to a sediment quality that will result in no adverse effects, including no acute or chronic adverse effects on biological resources and no significant health risk to humans.

(b) The marine sediment quality standards of this section shall apply to marine sediments located within Puget Sound as defined in WAC 173-204-200(~~((+9))~~) (36).

(c) Non-Puget Sound marine sediment quality standards. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(2) Chemical concentration criteria. The chemical concentrations in Table I establish the marine sediment quality standards chemical criteria for designation of sediments.

(a) Where laboratory analysis indicates a chemical is not detected in a sediment sample, the detection limit shall be reported and shall be at or below the Marine Sediment Quality Standards chemical criteria value set in this table.

(b) Where chemical criteria in this table represent the sum of individual compounds or isomers, the following methods shall be applied:

(i) Where chemical analyses identify an undetected value for every individual compound/isomer then the single highest detection limit shall represent the sum of the respective compounds/isomers; and

(ii) Where chemical analyses detect one or more individual compound/isomers, only the detected concentrations will be added to represent the group sum.

(c) The listed chemical parameter criteria represent concentrations in parts per million, "normalized," or expressed, on a total organic carbon basis. To normalize to total organic carbon, the dry weight concentration for each parameter is divided by the decimal fraction representing the percent total organic carbon content of the sediment.

(d) The LPAH criterion represents the sum of the following "low molecular weight polynuclear aromatic hydrocarbon" compounds: Naphthalene, Acenaphthylene, Acenaphthene, Fluorene, Phenanthrene, and Anthracene. The LPAH criterion is not the sum of the criteria values for the individual LPAH compounds as listed.

(e) The HPAH criterion represents the sum of the following "high molecular weight polynuclear aromatic hydrocarbon" compounds: Fluoranthene, Pyrene, Benz(a)anthracene, Chrysene, Total Benzofluoranthenes, Benzo(a)pyrene, Indeno(1,2,3,-c,d)pyrene, Dibenzo(a,h)anthracene, and Benzo(g,h,i)perylene. The HPAH criterion is not the sum of the criteria values for the individual HPAH compounds as listed.

(f) The TOTAL BENZOFLUORANTHENES criterion represents the sum of the concentrations of the "B," "J," and "K" isomers.

CHEMICAL PARAMETER	MG/KG ORGANIC CARBON (PPM CARBON)
LPAH	370
NAPHTHALENE	99
ACENAPHTHYLENE	66
ACENAPHTHENE	16
FLUORENE	23
PHENANTHRENE	100
ANTHRACENE	220
2-METHYLNAPHTHALENE	38
HPAH	960
FLUORANTHENE	160
PYRENE	1000
BENZ(A)ANTHRACENE	110
CHRYSENE	110
TOTAL BENZOFLUORANTHENES	230
BENZO(A)PYRENE	99
INDENO (1,2,3,-C,D) PYRENE	34
DIBENZO (A,H) ANTHRACENE	12
BENZO(G,H,I)PERYLENE	31
1,2-DICHLOROBENZENE	2.3
1,4-DICHLOROBENZENE	3.1
1,2,4-TRICHLOROBENZENE	0.81
HEXACHLOROBENZENE	0.38
DIMETHYL PHTHALATE	53
DIETHYL PHTHALATE	61
DI-N-BUTYL PHTHALATE	220
BUTYL BENZYL PHTHALATE	4.9
BIS (2-ETHYLHEXYL) PHTHALATE	47
DI-N-OCTYL PHTHALATE	58
DIBENZOFURAN	15
HEXACHLOROBUTADIENE	3.9
N-NITROSODIPHENYLAMINE	11
TOTAL PCB'S	12

CHEMICAL PARAMETER	UG/KG DRY WEIGHT (PARTS PER BILLION (PPB) DRY)
PHENOL	420
2-METHYLPHENOL	63
4-METHYLPHENOL	670
2,4-DIMETHYL PHENOL	29
PENTACHLOROPHENOL	360
BENZYL ALCOHOL	57
BENZOIC ACID	650

Table I

Marine Sediment Quality Standards—  
Chemical Criteria

CHEMICAL PARAMETER	MG/KG DRY WEIGHT (PARTS PER MILLION (PPM) DRY)
ARSENIC	57
CADMIUM	5.1
CHROMIUM	260
COPPER	390
LEAD	450
MERCURY	0.41
SILVER	6.1
ZINC	410

(3) Biological effects criteria. For designation of sediments pursuant to WAC 173-204-310(2), sediments are determined to have adverse effects on biological resources when any one of the confirmatory marine sediment biological tests of WAC 173-204-315(1) demonstrate the following results:

(a) Amphipod: The test sediment has a higher (statistically significant, t test, p≤0.05) mean mortality than the reference sediment and the test sediment mean mortality exceeds twenty-five percent, on an absolute basis.

(b) Larval: The test sediment has a mean survivorship of normal larvae that is less (statistically significant, t test, p≤0.05) than the mean normal survivorship in the reference

sediment and the test sediment mean normal survivorship is less than eighty-five percent of the mean normal survivorship in the reference sediment (i.e., the test sediment has a mean combined abnormality and mortality that is greater than fifty percent relative to time-final in the reference sediment).

(c) Benthic abundance: The test sediment has less than fifty percent of the reference sediment mean abundance of any one of the following major taxa: Class Crustacea, Phylum Mollusca or Class Polychaeta, and the test sediment abundance is statistically different (t test,  $p \leq 0.05$ ) from the reference sediment abundance.

(d) Juvenile polychaete: The test sediment has a mean individual growth rate of less than seventy percent of the reference sediment mean individual growth rate and the test sediment mean individual growth rate is statistically different (t test,  $p \leq 0.05$ ) from the reference sediment mean individual growth rate.

(e) Microtox: The mean light output of the highest concentration of the test sediment is less than eighty percent of the mean light output of the reference sediment, and the two means are statistically different from each other (t test,  $p \leq 0.05$ ).

(4) Marine sediment human health criteria. Reserved: The department may determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(5) Marine sediment other toxic, radioactive, biological, or deleterious substances criteria. Other toxic, radioactive, biological or deleterious substances in, or on, sediments shall be at or below levels which cause no adverse effects in marine biological resources, and below levels which correspond to a significant health risk to humans, as determined by the department. The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter pursuant to WAC 173-204-310(3).

(6) Nonanthropogenically affected sediment quality criteria. Whenever the nonanthropogenically affected sediment quality is of a lower quality (i.e., higher chemical concentrations, higher levels of adverse biological response, or posing a greater health threat to humans) than the applicable sediment quality standards assigned for said sediments by this chapter, the existing sediment chemical and biological quality shall be identified on an area-wide basis as determined by the department, and used in place of the sediment quality standards of WAC 173-204-320.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-350 Sediment quality standards inventory.** (1) The department shall gather available data on sediments and produce an inventory of sediment sampling stations which pass or fail the applicable sediment quality standards of WAC 173-204-320 through 173-204-340. Sediment sampling stations which are evaluated for compliance with the sediment quality standards of WAC 173-204-320 through 173-204-340 and placed on the inventory shall be sampled and analyzed using the Puget Sound Protocols or other methods approved by the department, and shall use an

appropriate quality assurance/quality control program, as determined by the department. The sediment quality standards inventory produced per this section shall be used by the department, and made available upon request to the public and other federal, state, and local agencies for the following uses:

(a) To identify and target necessary source control activities, such as discharger monitoring, to eliminate adverse effects on biological resources and significant health threats to humans from sediment contamination;

(b) To identify contaminated sediment cleanup sites per the procedures in WAC 173-204-500 through 173-204-590;

(c) To establish sediment quality ambient monitoring program status and trends analyses and reports;

(d) To identify the sediment quality of areas proposed for dredging, in-water construction, and other actions requiring federal, state, and/or local permits; and

(e) To complete other uses consistent with the intent of this chapter, as determined by the department.

(2) Sources of data. Sediment biological and chemical data shall be gathered by the department for review to produce and update the sediment quality inventory on a biennial basis. Data sources include, but are not limited to:

(a) Sediment data collected by the department for the Puget Sound ambient monitoring program, compliance monitoring of permitted discharges, and special environmental investigations.

(b) Sediment data submitted to the U.S. Army Corps of Engineers in support of dredging permit applications.

(c) Sediment data collected to identify problem areas and needed source controls in Puget Sound as defined in WAC 173-204-200(~~((19))~~) (36), other marine waters, and all low salinity and freshwater areas in Washington state.

(d) Sediment data used or collected in compliance with chapter 70.105D RCW, and the Model Toxics Control Act cleanup regulation, chapter 173-340 WAC.

(e) Sediment data used or collected in compliance with the federal Comprehensive Environmental Response, Compensation and Liability Act.

(f) Sediment data collected as a requirement of a National Pollutant Discharge Elimination System or state discharge permit.

(g) Sediment data derived from other studies including:

(i) Federally sponsored monitoring studies.

(ii) Special monitoring studies conducted by local and municipal governments, or private industry.

(iii) Data derived through Washington state department of natural resources administration of use authorizations.

(3) The inventory shall be updated and made available to the public on a biennial basis.

AMENDATORY SECTION (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-410 Sediment quality goal and sediment impact zone applicability.** (1) Goal and policies.

(a) It is the established goal of the department to manage source control activities to reduce and ultimately eliminate adverse effects on biological resources and significant health threats to humans from sediment contamination.

(b) The stated policy of the department shall be to only authorize sediment impact zones so as to minimize the number, size, and adverse effects of all zones, with the intent to eliminate the existence of all such zones whenever practicable. The department shall consider the relationship between environmental effects, technical feasibility and cost in determining whether it is practicable to minimize and/or eliminate sediment impact zones.

(c) The department shall implement the standards of WAC 173-204-400 through 173-204-420 so as to prevent the creation of new contaminated sediment cleanup sites identified under WAC (~~(173-204-530(4))~~) 173-204-520.

(2) A sediment impact zone authorization issued by the department under the authority of chapter 90.48 RCW does not constitute authorization to trespass on lands not owned by the applicant. These standards do not address and in no way alter the legal rights, responsibilities, or liabilities of the permittee or landowner of the sediment impact zone for any applicable requirements of proprietary, real estate, tort, and/or other laws not directly expressed as a requirement of this chapter.

(3) Except as identified in subsection (6)(d) of this section, any person may apply for a sediment impact zone under the following conditions:

(a) The person's discharge is provided with all known, available and reasonable methods of prevention, control, and treatment, and meets best management practices as stipulated by the department; and

(b) The person's discharge activity exposes or resuspends sediments which exceed, or otherwise cause or potentially cause sediments to exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, or the antidegradation policy standards of WAC 173-204-120 (1)(a) and (c) within a period of ten years from the later date of either the department's formal approval of the application for a sediment impact zone authorization or the starting date of the discharge.

(4) The department shall only authorize sediment impact zones for permitted wastewater and storm water discharges, and other discharges authorized by the department. The department shall authorize all sediment impact zones via discharge permits or other formal administrative actions.

(5) The department shall not limit the application, establishment, maintenance, or closure of an authorized sediment impact zone via consideration of sediment contamination determined by the department to be the result of unknown, unpermitted or historic discharge sources.

(6) As determined necessary by the department, any person with a permitted discharge shall be required to meet the standards of WAC 173-204-400 through 173-204-420, as follows:

(a) Any person with a new or existing permitted wastewater discharge shall be required to meet the standards of WAC 173-204-400 through 173-204-420;

(b) Any person with a new or existing permitted industrial storm water discharge, regulated as process wastewater in National Pollutant Discharge Elimination System or state discharge permits, shall be required to meet the standards of WAC 173-204-400 through 173-204-420;

(c) Any person with a new or existing permitted storm water or nonpoint source discharge, which fully uses all known, available and reasonable methods of prevention, control, and treatment, and best management practices as stipulated by the department at the time of the person's application for a sediment impact zone, shall be required to meet the standards of WAC 173-204-400 through 173-204-420;

(d) Any person with a storm water discharge, existing prior to the adoption of this chapter, and determined by the department to not be fully using best management practices stipulated by the department at the time of the person's application for a permit from the department, shall be eligible for a sediment impact zone as follows:

(i) The department shall issue sediment impact zone authorizations with requirements for application of best management practices stipulated by the department on an approved time schedule.

(ii) Sediment impact zones authorized by the department for permitted storm water discharges under the applicability provisions of subsection (6)(d) of this section shall be subject to cleanup action determinations made by the department pursuant to WAC 173-204-500 through 173-204-590 when the sediment impact zone maximum criteria of WAC 173-204-420 are exceeded within the authorized sediment impact zone.

(iii) The department shall identify and include best management practices required to meet the sediment impact zone design standards of WAC 173-204-415(4) as soon as practicable within sediment impact zone authorizations established for storm water discharges per WAC 173-204-410 (6)(d).

(7) Dredged material and fill discharge activities subject to authorization under Section 401 of the federal Clean Water Act via chapter 90.48 RCW and chapter 173-225 WAC, establishment of implementation procedures of application for certification, are not subject to the standards of WAC 173-204-415 but are subject to the standards of WAC 173-204-400 through 173-204-410 and 173-204-420 as follows:

(a) Requirements for dredging activities and disposal sites shall be established by the department using best available dredged material management guidelines and applicable federal and state rules. These guidelines shall include the Puget Sound dredged disposal analysis (PSDDA) dredged material testing and disposal requirements cited in:

(i) *Management Plan Report - Unconfined Open-Water Disposal Of Dredged Material, Phase I, (Central Puget Sound), June 1988, or as amended;*

(ii) *Management Plan Report - Unconfined Open-Water Disposal Of Dredged Material, Phase II, (North And South Puget Sound), September 1989, or as amended;* and

(iii) *Users Manual For Dredged Material Management In Puget Sound, November 1990, or as amended.*

(b) In coordination with other applicable federal and state and local dredged material management programs, the department may issue administrative orders to establish approved disposal sites, to specify disposal site use conditions, and to specify disposal site monitoring requirements.

(c) The department may authorize sediment impact zones for dredged material disposal via federal Clean Water Act Section 401 certification actions.

(d) As determined necessary by the department, the department may authorize sediment impact zones for dredged material disposal via administrative orders issued under authority of chapter 90.48 RCW. The department shall authorize sediment impact zones for all Puget Sound dredged disposal analysis disposal sites via administrative orders issued under authority of chapter 90.48 RCW.

(e) Administrative orders and certifications establishing sediment impact zones for dredged material disposal sites shall describe establishment, maintenance, and closure requirements for the authorized site, consistent with the requirements described in (a) of this subsection.

(8) The source control standards of WAC 173-204-400 through 173-204-420 are applicable in cases where the sediment quality standards of WAC 173-204-320 through 173-204-340 are reserved.

**AMENDATORY SECTION** (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-412 Marine finfish rearing facilities.**

(1) Purpose. This section sets forth the applicability of this chapter to marine finfish rearing facilities only. This section also identifies marine finfish rearing facility siting, operation, closure and monitoring requirements to meet the intent of this chapter, as applicable.

(2) Applicability. Marine finfish rearing facilities and their associated discharges are not subject to the authority and purpose standards of WAC 173-204-100 (3) and (7), and the marine sediment quality standards of WAC 173-204-320 and the sediment impact zone maximum criteria of WAC 173-204-420, within and including the distance of one hundred feet from the outer edge of the marine finfish rearing facility structure. Marine finfish rearing facilities are not subject to the sediment impact zone standards of WAC 173-204-415.

(3) Sediment monitoring. Sediment quality compliance and monitoring requirements for marine finfish rearing facilities shall be addressed through National Pollutant Discharge Elimination System or other permits issued by the department for facility operation. Marine finfish rearing facilities shall meet the following sediment quality monitoring requirements:

(a) Any person with a new facility shall identify a baseline sediment quality prior to facility operation for benthic infaunal abundance, total organic carbon and grain size in the location of the proposed operation and downcurrent areas that may be potentially impacted by the facility discharge;

(b) Any person with an existing operating facility shall monitor sediment quality for total organic carbon levels and identify the location of any sediments in the area of the facility statistically different (t test,  $p \leq 0.05$ ) from the total organic carbon levels identified as facility baseline levels or statistically different from the applicable total organic carbon levels as identified in Table 1:

TABLE 1 - Puget Sound Reference Total Organic Carbon Values

Silt-Clay Particles (percent Dry Weight)	Total Organic Carbon (percent Dry Weight)
0-20	0.5
20-50	1.7
50-80	3.2
80-100	2.6

(c) The locations and frequency of monitoring for total organic carbon, benthic infaunal abundance and other parameters shall be determined by the department and identified in the applicable National Pollutant Discharge Elimination System permit;

(d) Antibacterials. Reserved: The department shall determine on a case-by-case basis the methods, procedure, locations, and frequency for monitoring antibacterials associated with the discharge from a marine finfish rearing facility;

(e) Closure. All permitted marine finfish rearing facilities shall monitor sediments impacted during facility operation to document recovery of sediment quality to background levels. The department shall determine on a case-by-case basis the methods, procedure, locations, and frequency for monitoring sediments after facility closure.

(4) Sediment impact zones. Marine finfish rearing facilities and their associated discharges that are permitted under a National Pollutant Discharge Elimination System permit are hereby provided a sediment impact zone by rule for any sediment quality impacts and biological effects within and including the distance of one hundred feet from the outer edge of the marine finfish rearing facility structure.

(a) The department may authorize an individual marine finfish rearing facility sediment impact zone for any sediments beyond a distance of one hundred feet from the facility perimeter via National Pollutant Discharge Elimination System permits or administrative actions. The authorized sediment impact zone shall meet the benthic infaunal abundance requirements of the sediment impact zone maximum criteria, WAC 173-204-420 (3)(c)(iii). Marine finfish rearing facilities that exceed the sediment quality conditions of subsection (3)(b) of this section beyond a distance of one hundred feet from the facility perimeter shall:

(i) Begin an enhanced sediment quality monitoring program to include benthic infaunal abundance consistent with the requirements of the National Pollutant Discharge Elimination System permit. The sediment quality monitoring program shall include a benthic infaunal abundance reference sediment sample as required in subsection (3)(a) of this section or a benthic infaunal abundance reference sediment sample in compliance with WAC 173-204-200(~~(24))~~ (39); and

(ii) Be consistent with the sediment source control general considerations of WAC 173-204-400 and the sediment quality goal and sediment impact zone applicability requirements of WAC 173-204-410, apply for a sediment impact zone as determined necessary by the department.

(b) Administrative orders or permits establishing sediment impact zones for marine finfish rearing facilities shall describe establishment, maintenance, and closure requirements as determined necessary by the department.

AMENDATORY SECTION (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-415 Sediment impact zones.** The purpose of this section is to set forth the standards for establishment, maintenance, and closure of sediment impact zones to meet the intent of sediment quality dilution zones authorized pursuant to RCW 90.48.520, except for sediment impact zones authorized under WAC 173-204-410(7). The department shall authorize all sediment impact zones via discharge permits or other formal administrative actions.

(1) General requirements. Authorization, modification and renewal of a sediment impact zone by the department shall require compliance with the following general requirements:

(a) Permits authorizing wastewater discharges to surface waters of the state of Washington under authority of chapter 90.48 RCW shall be conditioned so that the discharge receives:

(i) All known, available and reasonable methods of prevention, control, and treatment prior to discharge, as required by chapters 90.48, 90.52, and 90.54 RCW; and

(ii) Best management practices as stipulated by the department.

(b) The maximum area, and maximum chemical contaminant concentration and/or allowable maximum biological effect level within sediments assigned to a sediment impact zone shall be as authorized by the department, in accordance with the standards of this section.

(c) The department shall determine that the person's activity generating effluent discharges which require authorization of a sediment impact zone is in the public interest.

(d) The department shall determine that any person's activity generating effluent discharges which require authorization of a sediment impact zone has adequately addressed alternative waste reduction, recycling, and disposal options through application of all known, available and reasonable methods of prevention, control, and treatment to minimize as best practicable the volume and concentration of waste contaminants in the discharge.

(e) The area boundaries of the sediment impact zone established by the department shall include the minimum practicable surface area, not to exceed the surface area allowed under subsection (4) of this section.

(f) Adverse effects to biological resources within an authorized sediment impact zone shall be maintained at the minimum chemical contamination and biological effects levels practicable at all times. The department shall consider the relationship between environmental effects, technical feasibility and cost in determining the minimum practicable chemical contamination and biological effects levels. Adverse effects to biological resources within an authorized sediment impact zone shall not exceed a minor adverse effects level as a result of the discharge, as determined by the procedures of subsection (4) of this section.

(g) The operational terms and conditions for the sediment impact zone shall be maintained at all times.

(h) Final closure of the sediment impact zone shall be conducted in strict accordance with the department's sediment impact zone authorization.

(i) Documents authorizing a sediment impact zone shall require that the permitted discharge not result in a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, outside the area limits of the established zone.

(j) All applications to the department for sediment impact zone authorizations shall be subject to public notice, comment and hearing procedures defined but not limited to the applicable discharge permit or other formal administrative action requirements of chapter 43.21C RCW, the State Environmental Policy Act, chapter 197-11 WAC, SEPA rules, chapter 90.48 RCW, chapter 163-216 WAC, the State waste discharge permit program, and chapter 173-220 WAC, National Pollutant Discharge Elimination System Permit Program prior to issuance of the authorization. In determining the need for, location, and/or design of any sediment impact zone authorization, the department shall give consideration to all comments received during public review of the proposed sediment impact zone application.

(2) Application requirements.

(a) Whenever, in the opinion of the department, as a result of an ongoing or proposed effluent discharge, a person violates, shall violate, or creates a substantial potential to violate the sediment quality standards of WAC 173-204-320 through 173-204-340 as applicable within a period of ten years from the later date of either the department's evaluation of the ongoing discharge or the starting date of the proposed discharge, the department may require application for a sediment impact zone authorization under authority of chapter 90.48 RCW.

(b) Any person with a proposed or permitted effluent discharge shall apply to the department for authorization of a sediment impact zone when:

(i) The department requires the sediment impact zone application by written notification; or

(ii) The person independently identifies that the ongoing or proposed effluent discharge violates, shall violate, or creates a substantial potential to violate the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 within a period of ten years from the later date of the person's evaluation of the ongoing discharge or the starting date of the proposed discharge, using the procedures of this section.

(c) As necessary, the department may require any person to submit a sediment impact zone application in multiple steps concurrent with its ongoing review and determination concerning the adequacy of the application. The application shall provide the sediment impact zone design information required in subsection (4) of this section and other such information the department determines necessary. The application shall also provide the legal location and landowner(s) of property proposed for use as, or potentially affected by, a sediment impact zone, and shall be accompanied by such other relevant information as the department may require. The department shall issue a written approval of the complete sediment impact zone application prior to or concurrent with authorizing a sediment impact zone.

(d) Submittal of an application to the department for authorization of a sediment impact zone under the terms and conditions of this section shall establish the applicant's

interim compliance with requirements of chapter 90.48 RCW and this chapter, as determined by the department. The department may authorize an interim compliance period within a valid discharge permit or administrative order to ensure ultimate compliance with chapter 90.48 RCW and this chapter. The interim compliance period shall not continue beyond the date of issuance of a sediment impact zone authorization within a valid discharge permit issued by the department.

(e) Prior to authorization, the department shall make a reasonable effort to identify and notify all landowners, adjacent landowners, and lessees affected by the proposed sediment impact zone. The department shall issue a sediment impact zone notification letter to any person it believes to be a potentially affected landowner and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide:

(i) The name of the person the department believes to be the affected landowner;

(ii) The names and addresses of other affected landowners to whom the department has sent a proposed sediment impact zone notification letter;

(iii) The name and address of the sediment impact zone applicant;

(iv) A general description of the location, size, and contamination level proposed for the sediment impact zone;

(v) The intention of the department to release all specific sediment impact zone application information to the public upon written request to the department;

(vi) The determination of the department concerning whether the proposed sediment impact zone application meets the standards of this section;

(vii) The intention of the department whether to authorize the proposed sediment impact zone; and

(viii) Notification that the affected landowners, adjacent landowners, and lessees may comment on the proposed sediment impact zone. Any comments on the proposed sediment impact zone authorization shall be submitted in writing to the department within thirty days from the date of receipt of the notification letter, unless the department provides an extension.

(f) Prior to authorization, the department shall issue a sediment impact zone notification letter to affected port districts, the Washington state department of natural resources marine lands division, the U.S. Army Corps of Engineers, and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide the information required under (e) of this subsection.

(3) Locational considerations. The department shall require any person applying for a sediment impact zone to submit information concerning potential location considerations of the zone. The location of an authorized sediment impact zone shall avoid whenever possible and minimize adverse impacts to areas of special importance. Prior to authorization of a sediment impact zone, the department shall consider all pertinent information from the applicant, all affected parties, local, state and federal agencies, federally

recognized Indian tribes, and the public concerning locational considerations, including but not limited to:

(a) Spawning areas;

(b) Nursery areas;

(c) Waterfowl feeding areas;

(d) Shellfish harvest areas;

(e) Areas used by species of economic importance;

(f) Tribal areas of significance;

(g) Areas determined to be ecologically unique;

(h) Water supply intake areas;

(i) Areas used for primary contact public recreation;

(j) High quality waters that constitute an outstanding national resource; and

(k) Areas where sediment quality is substantially better than levels necessary for protection of biological resources and human health.

(4) Design requirements. The location, areal limitations, and degree of effects allowed within an authorized sediment impact zone shall be determined by application of the department's sediment impact zone computer models "CORMIX," "PLUMES," and/or "WASP," or an alternate sediment impact zone model(s) approved by the department under WAC 173-204-130(4), as limited by the standards of this section and the department's best professional judgment. The models shall be used by the department or by the discharger as required by the department, to estimate the impact of any person's wastewater or storm water discharge on the receiving water and sediment quality for a period of ten years from the later date of either the department's formal approval of the application for a sediment impact zone authorization or the starting date of the discharge.

(a) Data requirements. The discharger shall submit the following information to determine requirements for establishment and authorization of a sediment impact zone, as required by the department:

(i) Data reports and analyses results for all samples of wastewater or storm water, receiving water, and sediments collected by the discharger or other parties relating to evaluation of the potential effects of the permitted discharge, as required by WAC 173-204-400.

(ii) Data reports and analyses results determined necessary to:

(A) Apply discharge modeling to the permitted discharge; and

(B) To identify and evaluate potential alternative chemical and biological effects of the discharge on the receiving water and sediments; and

(C) To identify and evaluate potential alternatives to define the areal size and location of a sediment impact zone needed by the discharge.

(iii) Data reports and analyses results from the discharger's application of the "CORMIX," "PLUMES," and/or "WASP" or an alternate sediment impact zone model(s) approved by the department under WAC 173-204-130(4), to the permitted discharge to identify and evaluate:

(A) Potential alternative chemical and biological effects of the discharge on the receiving water and sediments; and

(B) Potential alternatives for the areal distribution and location of a potential sediment impact zone required by the discharge.

(iv) Preferred alternative for closure of the potential sediment impact zone by active removal and/or natural recovery, and identified costs of the preferred closure method.

(b) Overlapping sediment impact zones. Overlapping sediment impact zones, as predicted by the "CORMIX," "PLUMES," and/or "WASP" models or an alternate sediment impact zone model(s) approved by the department under WAC 173-204-130(4), and the department's best professional judgment, shall be authorized only as follows:

(i) The applicable sediment impact zone maximum criteria of WAC 173-204-420 shall not be exceeded as a result of the multiple discharge sediment impact zones overlap; and

(ii) If the department determines that the applicable chemical contaminant concentration and biological effects restrictions of WAC 173-204-420 would be exceeded as a result of the overlap of multiple discharge sediment impact zones, the department may authorize the sediment impact zones after:

(A) Application of a waste load allocation process to the individual permitted discharges to identify individual permit effluent limitations necessary to meet:

(I) The applicable chemical contaminant concentration and biological effects restrictions for sediment impact zones required by this section; and/or

(II) Storm water best management practices required by the department; and

(B) Establishment of individual permit compliance schedules for the multiple permitted discharges to ensure compliance with:

(I) The permit effluent limitations established by the department using the waste load allocation process and best professional judgment; and

(II) The standards of WAC 173-204-400 through 173-204-420.

(5) Maintenance requirements.

(a) The department shall review sediment impact zone monitoring conducted by the discharger to evaluate compliance with the department's sediment impact zone authorization and the standards of WAC 173-204-400 through 173-204-420. The department may require additional sediment impact zone monitoring when the department determines that any sediment sampling station within an authorized sediment impact zone exceeds the sediment impact zone maximum criteria of WAC 173-204-420 or violates the sediment impact zone authorization as a result of the discharge.

(b) Whenever the department can clearly demonstrate that, as a result of an effluent discharge, a discharger violates, shall violate, or creates a substantial potential to violate the department's sediment impact zone authorization, or the sediment impact zone maximum criteria of WAC 173-204-420, the department shall:

(i) Provide written notification and supporting documentation of the department's clear demonstration determination to the affected discharger;

(ii) Establish a reasonable time frame for the affected discharger to either submit a written statement and supporting documentation rebutting the department's clear demonstration determination, or accept the department's determination. The discharger may use the clear demonstration meth-

ods identified in (c) of this subsection for rebuttal of the department's clear demonstration; and

(iii) Provide written notification of the department's determination concerning approval or denial of the submitted clear demonstration rebuttal to the discharger.

(c) For the purpose of this section, a clear demonstration shall consist of:

(i) Use of the sediment impact zone model(s) "CORMIX," "PLUMES," and/or "WASP" or other model(s) to demonstrate a discharge(s) is the source of the violation or potential violation; and

(ii) Use of one or more of the following methods to demonstrate a violation of the sediment impact zone authorization or the sediment impact zone maximum criteria of WAC 173-204-420:

(A) Direct sediment sampling. A violation of the sediment impact zone authorization and/or the sediment impact zone maximum criteria of WAC 173-204-420 is demonstrated when:

(I) The average chemical concentration for three stations within the sediment impact zone exceeds the sediment impact zone maximum criteria of WAC 173-204-420 due to the discharge source. This concentration average shall not include stations for which complete biological testing information shows that the biological effects requirements of WAC 173-204-420, or the authorized sediment impact zone if applicable, are met; or

(II) The biological effects at each of any three stations within the sediment impact zone exceed the sediment impact zone maximum biological effects criteria of WAC 173-204-420 or the authorized sediment impact zone as applicable, due to the discharge source; or

(B) Monitoring data which demonstrates a chemical contaminant concentration gradient toward the discharge source exists in sediments which violates the sediment impact zone authorization or the standards of WAC 173-204-420; or

(C) A trend analysis of the effluent chemical discharge quality and ~~((in place))~~ in place sediment monitoring data which statistically demonstrates an ongoing violation or substantial potential to violate the sediment impact zone authorization or the standards of WAC 173-204-420; or

(D) Field depositional (e.g., sediment traps) and/or effluent particulate (e.g., centrifuge analysis) data which demonstrate an ongoing violation or substantial potential to violate the sediment impact zone authorization or the standards of WAC 173-204-420; or

(E) Mathematical or computer modeling which demonstrates an ongoing violation or substantial potential to violate the sediment impact zone authorization or the standards of WAC 173-204-420.

(d) The department's response to a clear demonstration of a violation or potential violation shall be to require maintenance activities in the following order:

(i) Require reanalysis of whether the discharger's effluent treatment complies with all known, available and reasonable methods of prevention, control, and treatment and best management practices based on the data used to establish the clear demonstration;

(ii) Alter the authorized sediment impact zone size and/or degree of effects consistent with the standards of this section and the results of direct sediment sampling;

(iii) Reduce impacts of the existing or potential violation by requiring additional discharge controls or additional sediment impact zone maintenance activities which can include, but are not limited to:

(A) Dredging and removal of sediments, solely for sediment impact zone maintenance needs or coordinated with maintenance dredging of commercially important areas, e.g., navigational lanes or ship berthing areas;

(B) Dredging, treatment, and replacement of sediments within the sediment impact zone; and/or

(C) Capping of sediments within the sediment impact zone;

(iv) Limit the quantity and/or quality of the existing permitted discharge; and/or

(v) Withdraw the department's sediment impact zone authorization and require final closure of the zone.

(e) All sediment impact zone maintenance actions conducted under this chapter shall provide for landowner review of the maintenance action plans prior to implementation of the action. In cases where the discharger is not able to secure access to lands subject to the sediment impact zone maintenance actions of this subsection, the department may facilitate negotiations or other proceedings to secure access to the lands. Requests for department facilitation of land access shall be submitted to the department in writing by the responsible discharger.

(6) Closure planning and requirements.

(a) The discharger shall select and identify a preferred method for closure of a sediment impact zone in the application required by WAC 173-204-415(2). Closure methods can include either active cleanup and/or natural recovery and monitoring. The department shall incorporate the discharger's identified closure method in the sediment impact zone authorization.

(b) The department may require closure of authorized sediment impact zones when the department determines that:

(i) The discharger has violated the sediment impact zone maintenance standards of subsection (5) of this section; or

(ii) The department determines that:

(A) The wastewater or storm water discharge quality will not violate the applicable sediment quality standards of WAC 173-204-320 through 173-204-340; or

(B) A sediment impact zone is no longer needed or eligible under the standards of WAC 173-204-410 through 173-204-415.

(7) Modification of sediment impact zones. The department may modify sediment impact zone authorization requirements where the nature of a person's activity which generates, transports, disposes, prevents, controls, or treats effluent discharges has substantially changed and been demonstrated to the department's satisfaction. The modification may occur after consideration of the following:

(a) Reduction of effects. Assessment of the discharge activities and treatment methods shall be conducted by the discharger to demonstrate to the satisfaction of the department that:

(i) Elimination of the sediment impact zone is not practicable; and

(ii) Further reduction in any existing or proposed sediment impact zone area size and/or level of contamination or effects is not practicable in consideration of discharge requirements for all known, available and reasonable methods of prevention, control, and treatment, best management practices, and applicable waste reduction and recycling provisions.

(b) Alterations. There are substantial alterations or additions to the person's activity generating effluent discharges which require authorization of a sediment impact zone which occur after permit issuance and justify application of permit conditions different from, or absent in, the existing permit.

(c) New information. Sediment impact zones may be modified when new information is received by the department that was not available at the time of permit issuance that would have justified the application of different sediment impact zone authorization conditions.

(d) New regulations. The standards or regulations on which the permit was based have changed by amended standards, criteria, or by judicial decision after the permit was issued.

(e) Changes in technology. Advances in waste control technology that qualify as "all known, available and reasonable methods of prevention, control, and treatment" and "best management practices" shall be adopted as permit requirements, as appropriate, in all permits reissued by the department.

(8) Renewal of previously authorized sediment impact zones. Renewal of sediment impact zones previously authorized under the standards of WAC 173-204-410 and this section shall be allowed under the following conditions:

(a) The department determines the discharge activities and treatment methods meet all known, available and reasonable methods of prevention, control, and treatment and best management practices as stipulated by the department; and

(b) The discharger demonstrates to the department's satisfaction that the discharge activities comply with the standards of WAC 173-204-400 through 173-204-420 and with the existing sediment impact zone authorization; and

(c) Reduction of effects. The discharger conducts an assessment of the permitted discharge activities and treatment methods and demonstrates to the department's satisfaction that:

(i) Elimination of the sediment impact zone is not practicable; and

(ii) A further reduction in any existing or proposed sediment impact zone area size and/or level of contamination is not practicable in consideration of discharge requirements for all known, available and reasonable methods of prevention, control, and treatment, best management practices, and applicable waste reduction and recycling provisions.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-500 Sediment cleanup decision process and policies.** ~~((1) The standards of WAC 173-204-500 through 173-204-590 are procedures which specify a cleanup~~

decision process for managing contaminated sediments. These procedures include:

- (a) Screening sediment station clusters of potential concern;
- (b) Conducting hazard assessments to identify cleanup sites;
- (c) Ranking sites identified in (b) of this subsection;
- (d) Determining the appropriate site cleanup authority;
- (e) Conducting a site cleanup study;
- (f) Determining the site-specific cleanup standard;
- (g) Selecting a site cleanup action; and
- (h) Where necessary, authorizing a cleanup site sediment recovery zone.

(2) Under this chapter, the department may require or take those actions necessary to implement the standards of WAC 173-204-500 through 173-204-580 for all contaminated sediment stations on the inventory identified in WAC 173-204-350.

(3) The cleanup process and procedures under this chapter and under other laws may be combined. The department may initiate a cleanup action under this chapter and may upon further analysis determine that another law is more appropriate, or vice versa.

(4) It is the policy of the department to manage sediment cleanup actions towards the goal of reducing and ultimately eliminating adverse effects on biological resources and significant health threats to humans from sediment contamination. To achieve this goal, the department will pursue sediment cleanup decisions and cleanup standards that are as close as practicable to the sediment quality standards of WAC 173-204-320 through 173-204-340, including the consideration of net environmental effects, cost and technical feasibility. The department shall only authorize sediment recovery zones so as to minimize the number, size and adverse effects of all zones, with the intent to eliminate the existence of all such zones whenever practicable.

(5) The department shall endeavor to make sediment cleanup decisions in an expeditious manner, as soon as all needed information is available, consistent with the availability of department resources and the priority of the cleanup site:)) (1) **Applicability.**

(a) This part is promulgated under the authority of chapter 70.105D RCW, the Model Toxics Control Act. Sediment cleanup standards and the other cleanup criteria of WAC 173-204-500 through 173-204-590 are not sediment quality standards and shall only be used for purposes specified in chapter 70.105D RCW. Sediment quality standards are established under Part III of this chapter under the authority of chapters 70.105D and 90.48 RCW.

(b) This section describes the decision process and associated policies and principles governing the investigation and cleanup of contaminated sediment at sites under chapter 70.105D RCW. If there are any inconsistencies between this section and a specifically referenced section, the specifically referenced section shall govern.

(2) **Cleanup decision process.** In general, the process for cleanup of contaminated sediments includes the following steps:

(a) Identifying sediment station clusters of potential concern (WAC 173-204-510);

(b) Identifying cleanup sites for further evaluation (WAC 173-204-520);

(c) Evaluating sites identified in (b) of this subsection (WAC 173-204-530);

(d) Determining the appropriate site cleanup authority (WAC 173-204-540);

(e) Conducting a remedial investigation and feasibility study (WAC 173-204-550);

(f) Establishing the applicable sediment cleanup standards (WAC 173-204-560);

(g) Selecting a cleanup action (WAC 173-204-570);

(h) Documenting the cleanup action decision and soliciting public review of that decision (WAC 173-204-580); and

(i) Where necessary, authorizing a sediment recovery zone (WAC 173-204-590).

(3) **Coordination with other laws.** The cleanup process and procedures under this chapter and under other laws may be combined.

(4) **Cleanup process expectations.** The department has the following expectations regarding the cleanup process for contaminated sediment sites. The department recognizes there may be sites where cleanup actions conforming to these expectations are not appropriate:

(a) **Scale of cleanups.** Sediment contamination can be widespread with multiple contaminants from multiple sources that have been intermingled and dispersed by natural processes and human activity. It is the department's intent to address this widespread contamination using multiple approaches that lead to cleanup as effectively and efficiently as possible. This may include:

(i) The establishment of "sediment cleanup unit(s)" within a site, and the expedited cleanup of those units consistent with the cleanup strategy and broader scale toxics reduction and source control strategies;

(ii) Coordinating cleanup of multiple sites and sediment cleanup units on a bay-wide, area-wide, or watershed-wide scale; and

(iii) Use of source control measures to minimize future contamination.

(b) **Recontamination.** Recontamination of sediment at remediated sites or sediment cleanup units may occur from ongoing discharges. It is the department's expectation that further cleanup of recontamination will not be required by the person(s) conducting the initial cleanup when the person(s) can demonstrate, upon department approval, that the recontamination is caused by a source or a permitted release not under the authority or responsibility of the person(s) conducting the initial cleanup.

(c) **Restoration time frame.** The department expects that the sediment component of sites and sediment cleanup units with limited contamination will be restored within a single construction season using active cleanup actions such as dredging or capping. However, the department recognizes longer restoration time frames may be necessary at sites with more extensive or widespread contamination, including sites with ubiquitous chemicals from numerous point and nonpoint source discharges. At such sites, the department expects cleanup actions will include a combination of active and passive cleanup actions and will achieve restoration as soon as

practicable following completion of the active cleanup actions.

(d) Sediment recovery zones. At sites or sediment cleanup units where the cleanup action cannot practicably achieve sediment cleanup standards within ten years after start of the cleanup action, the department expects that a sediment recovery zone will be established and managed in accordance with WAC 173-204-590.

(e) Compliance monitoring. The department expects that post-cleanup monitoring will be conducted at sites and sediment cleanup units to verify compliance with approved sediment cleanup standards. Monitoring will typically include analysis of sediment chemistry at a minimum, but may also include bioassays, tissue chemistry, pore water and surface water testing, and more intense discharge monitoring than would normally occur under a discharge permit where circumstances warrant.

(f) Scope of information. The scope of information needed to adequately characterize different site or sediment cleanup units will vary depending on site conditions and complexity. It is the department's expectation that sufficient information will be gathered in as few sampling events as feasible to enable appropriate decisions and cleanups to proceed expeditiously.

(g) Timely decisions. The department shall endeavor to make sediment cleanup decisions in an expeditious manner, as soon as all information required by the department is available, consistent with the availability of department resources and the priority of the cleanup site.

**(5) Relationship between sediment cleanup standards and cleanup actions.** It is the policy of the department to establish sediment cleanup standards and select cleanup actions that support the goal of reducing and ultimately eliminating adverse effects on biological resources and risks to human health from sediment contamination.

(a) Sediment cleanup standards. WAC 173-204-560 establishes requirements for sediment cleanup standards. Sediment cleanup standards consist of sediment cleanup levels for individual contaminants and the locations within the site or sediment cleanup unit where the sediment cleanup levels must be met (points of compliance or biologically active zone). Sediment cleanup standards may also include other regulatory requirements that apply to a cleanup action for contaminated sediment because of the type of action and/or location of the site (applicable local, state, and federal laws).

(i) Sediment cleanup levels. A sediment cleanup level is the concentration or level of biological effects for a contaminant in sediment that is determined by the department to be protective of human health and the environment. The sediment cleanup level is established in accordance with the requirements in WAC 173-204-560(2). The sediment cleanup level shall be the sediment cleanup objective and shall be adjusted upward as required based on what is technically possible and whether meeting the sediment cleanup objective will have an adverse impact on the aquatic environment, including natural resources and habitat. A sediment cleanup level may not be adjusted upward above the cleanup screening level. The sediment cleanup level, in combination with the point of compliance or biologically active zone, typically defines the area or volume of sediment at a site or sed-

iment cleanup unit that must be addressed by the cleanup action.

(A) Sediment cleanup objectives. The sediment cleanup objective defines the goal for protection of human health and environment. This goal is expected to be achieved through a combination of cleanup actions and source control. The sediment cleanup objective is established in accordance with the requirements in WAC 173-204-560(3). If a risk-based concentration is below the natural background level or level that can be reliably measured, then the sediment cleanup objective is established at a concentration equal to the practical quantitation limit or natural background, whichever is higher.

(B) Cleanup screening level. The cleanup screening level is established in accordance with the requirements in WAC 173-204-560(4). If a risk-based concentration is below the regional background level or level that can be reliably measured, then the cleanup screening level is established at a concentration equal to the practical quantitation limit or regional background, whichever is higher.

(ii) Points of compliance. A point of compliance is the location within the site where sediment cleanup levels must be attained. Points of compliance are established in accordance with the requirements in WAC 173-204-560(6). Points of compliance may be established within the biologically active zone to protect aquatic life or may be established within a different location to protect human health.

(b) Cleanup actions. WAC 173-204-570 establishes requirements for cleanup actions for contaminated sediment. The cleanup actions must achieve sediment cleanup standards within the site or sediment cleanup unit, as applicable. Cleanup actions usually consist of a combination of active and passive actions. At sites where there are ongoing sources, the cleanup actions will usually also include source control measures.

(i) Active cleanup actions. Sediment contamination may be addressed by active cleanup actions such as dredging, capping, treatment, and enhanced natural recovery. Active cleanup actions are preferred over passive cleanup actions.

(ii) Passive cleanup actions. Passive cleanup actions, such as monitored natural recovery and institutional controls, may be used in combination with active cleanup actions and source control measures to address sediment contamination.

(iii) Source control. Source control measures consist of controlling ongoing sources to limit discharges of contaminants that accumulate in sediment. Source control measures may be necessary part of a cleanup action to prevent recontamination of the site or sediment cleanup unit above the sediment cleanup level.

(c) Presumption of protectiveness. Sediment cleanup actions that achieve the sediment cleanup levels at the applicable points of compliance are presumed to be protective of human health and the environment.

**(6) Applicability of new sediment cleanup standards.**

(a) The department shall determine the sediment cleanup standards that apply to a site or sediment cleanup unit based on the rules in effect under this chapter at the time the department issues a final cleanup action plan or similar decision document as described in WAC 173-204-580.

(b) A site cleaned up with sediment cleanup standards determined in (a) of this subsection shall not be subject to fur-

ther cleanup action due solely to subsequent amendments of the requirements in this chapter governing the establishment of sediment cleanup standards, unless the department determines on a case-by-case basis that the previous cleanup action is no longer sufficiently protective of human health and the environment.

AMENDATORY SECTION (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-510 ((Screening)) Identifying sediment station clusters of potential concern.** (1) ~~((Using the sediment quality standards inventory of WAC 173-204-350,))~~ **Data analysis.** The department shall analyze the sediment sampling data to identify station clusters of potential concern and station clusters of low concern ~~((per the standards of this section)).~~ Station clusters of potential concern shall be further evaluated using the hazard assessment standards of WAC ~~((173-204-530))~~ 173-204-520. Station clusters of low concern shall remain on the inventory and no further cleanup action determinations shall be ~~((taken))~~ made by the department until the stations are reexamined per subsection (5) of this section.

(2) **Station clusters.** A station cluster is defined as any number of stations ~~((from the inventory of WAC 173-204-350))~~ that are determined by the department to be spatially and chemically similar. For the purpose of identifying a station cluster of potential concern ~~((per the procedures of this subsection)),~~ three stations with the highest contaminant concentration for any particular contaminant or the highest degree of biological effects as identified in WAC ~~((173-204-520))~~ 173-204-562 and 173-204-563 are selected from a station cluster. This procedure may be repeated for multiple chemicals ~~((identified in WAC 173-204-520)),~~ recognizing that the three stations with the highest concentration for each particular contaminant may be different and the respective areas for all chemicals may overlap. The department shall ~~((review the inventory of WAC 173-204-350 to))~~ identify station clusters of potential concern ~~((via the following))~~ using the process ~~((:))~~ specified in this subsection.

(a) Identify, if available, the three stations within a station cluster with the highest concentration of each chemical contaminant identified in WAC ~~((173-204-520, Cleanup screening levels criteria; and))~~ 173-204-562 and 173-204-563.

~~((b))~~ (i) For each contaminant identified in (a) of this subsection, determine the average concentration for the contaminant at the three stations identified ~~((in (a) of this subsection; and)).~~

~~((c))~~ Identify if available, three stations within the station cluster with the highest level of biological effects for the biological tests identified in WAC 173-204-315(1); and

~~((d))~~ (ii) If the average chemical contaminant concentration for any three stations identified in (a) of this subsection, exceeds the applicable cleanup screening level in WAC ~~((173-204-520))~~ 173-204-562 and 173-204-563, then the station cluster ~~((is))~~ shall be defined as a station cluster of potential concern ~~((; and)).~~

~~((e))~~ (b) Identify, if available, three stations within the station cluster with the highest level of biological effects for

the biological tests identified in WAC 173-204-562 and 173-204-563. If the level of biological effects at each of the three stations from ~~((e))~~ (b) of this subsection exceeds the cleanup screening level in WAC ~~((173-204-520))~~ 173-204-562 and 173-204-563, then the station cluster is defined as a station cluster of potential concern ~~((; and)).~~

~~((f))~~ If neither of the conditions of (d) or (e) of this subsection apply, then the station cluster is defined as a station cluster of low concern; and

~~((g))~~ (c) If the department determines that ~~((any))~~ each of three stations within a station cluster exceed the ~~((sediment cleanup screening))~~ following criteria, then the station cluster shall be defined as a station cluster of potential concern:

(i) The applicable cleanup screening levels human health or background criteria ~~((or))~~ in WAC 173-204-560(4);

(ii) The other toxic, radioactive, biological, or deleterious substances criteria in WAC 173-204-562 and 173-204-563, as applicable; or

(iii) The nonanthropogenically affected criteria of WAC ~~((173-204-520, then the station cluster is defined as a station cluster of potential concern))~~ 173-204-562 and 173-204-563, as applicable.

~~((d))~~ If neither of the conditions of (a)(ii) or (b)(i) or (c) of this subsection apply, then the station cluster is defined as a station cluster of low concern.

(3) **Notification.** When a station cluster of potential concern has been identified, the department shall issue notification to the landowners, lessees, onsite dischargers, adjacent dischargers, and other persons determined appropriate by the department prior to the department's conducting a hazard assessment as defined in WAC 173-204-530.

(4) **No further cleanup action.** No further cleanup action determinations shall be taken with station clusters of low concern until ~~((the inventory of WAC 173-204-350 is updated))~~ new information is available and the stations reexamined per subsection (5) of this section. Station clusters of low concern shall receive no further consideration for active cleanup, unless new information indicates an increase of chemical contamination at the stations in question. Station clusters of low concern shall be evaluated by the department for improved source control and/or monitoring requirements of this chapter.

(5) **Reevaluation.** The department may at any time reexamine a station or group of stations to reevaluate and identify station clusters of potential concern following the procedures of subsection (2) of this section when new information demonstrates to the department's satisfaction that reexamination actions are necessary to fulfill the purposes of WAC 173-204-500 through 173-204-590.

AMENDATORY SECTION (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-520 ((Cleanup screening levels criteria-)) Sediment cleanup levels based on protection of the benthic community in marine and low salinity sediment.**

(1) **Applicability.**

~~((a))~~ The marine sediment cleanup screening levels chemical criteria, and the marine sediment biological effects criteria, and the marine sediment other toxic, radioactive, bio-

~~logical, or deleterious substance criteria, and the marine sediment nonanthropogenically affected criteria of this section))~~  
This section defines sediment cleanup objectives and cleanup screening levels for contaminants based on protection of the benthic community in marine and low salinity sediment. They are used to:

(a) Identify and assess the hazard of sites under WAC 173-204-510 and 173-204-520;

(b) Establish sediment cleanup levels for sites and sediment cleanup units under WAC 173-204-560.

(2) Marine sediment - Chemical criteria. The chemical concentration criteria in Table IV establish the sediment cleanup objectives and cleanup screening levels chemical criteria for marine sediment. The criteria of this section shall apply to marine sediments ~~((within Puget Sound))~~ for toxicity to the benthic community.

(a) The sediment cleanup objectives of this section establish a no adverse effects level, including no acute or chronic adverse effects, to the benthic community. Chemical concentrations at or below the sediment cleanup objectives correspond to sediment quality that results in no adverse effects to the benthic community.

(b) The cleanup screening levels of this section establish a minor adverse effects level, including acute or chronic effects, on the benthic community. Chemical concentrations at or below the cleanup screening level but greater than the sediment cleanup objective correspond to sediment quality that results in minor adverse effects to the benthic community. The marine chemical and biological cleanup screening levels establish minor adverse effects as the level above which station clusters of potential concern are defined and may be defined as potential cleanup sites for benthic community toxicity, and at or below which station clusters of low concern are defined, per the procedures identified in WAC 173-204-510~~((2))~~ and 173-204-520. ~~((The cleanup screening levels also establish the levels above which station clusters of potential concern are defined as cleanup sites, per the procedures identified in WAC 173-204-530, Hazard assessment. The criteria in Table III and this section also establish minor adverse effects as the Puget Sound marine sediment minimum cleanup level to be used in evaluation of cleanup alternatives per the procedures of WAC 173-204-560, and selection of a site cleanup standard(s) per the procedures of WAC 173-204-570.~~

~~(b) Non-Puget Sound marine sediment cleanup screening levels and minimum cleanup levels criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.)~~

(c) The cleanup screening level chemical criteria is exceeded when the sediment chemical concentration for an individual chemical is above the cleanup screening level in Table IV.

(d) The sediment cleanup objective chemical criteria is exceeded when the sediment chemical concentration for one or more chemicals is above the sediment cleanup objective in Table IV.

(e) Low salinity sediment cleanup screening levels ~~((and minimum cleanup levels))~~ criteria. Reserved: The department shall determine on a case-by-case basis the criteria,

methods, and procedures necessary to meet the intent of this chapter.

~~((d) Freshwater sediment cleanup screening levels and minimum cleanup levels criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.~~

~~(2) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels chemical criteria. The chemical concentration criteria in Table III establish the Puget Sound marine sediment cleanup screening levels and minimum cleanup levels chemical criteria.~~

~~((a)) (f) For purposes of this section, where laboratory analysis indicates a chemical is not detected in a ~~((sediment))~~ sample, the method detection limit and the practical quantitation limit shall be reported and shall be at or below the ~~((Marine))~~ sediment ~~((Quality Standards))~~ cleanup objectives chemical criteria ~~((value set))~~ in ~~((WAC 173-204-320(2))~~ Table IV.~~

~~((b)) (g) Where chemical criteria in ~~((this))~~ Table IV represent the sum of individual compounds or isomers, the following methods shall be applied:~~

~~(i) Where chemical analyses identify an undetected value for every individual compound/isomer, then the single highest detection limit shall represent the sum of the respective compounds/isomers; and~~

~~(ii) Where chemical analyses detect one or more individual compound/isomers, only the detected concentrations will be added to represent the group sum.~~

~~((e)) (h) For some chemical criteria in Table IV, the listed ~~((chemical parameter))~~ criteria represent concentrations in parts per million, "normalized," or expressed, on a total organic carbon basis. To normalize to total organic carbon, the dry weight concentration for each parameter is divided by the decimal fraction representing the percent total organic carbon content (e.g., 0.01 means 1 percent) of the sediment per the equation: ppm OC = (ppb dry weight)/(percent total organic carbon x 1000).~~

~~((d)) (i) The LPAH criterion in Table IV represents the sum of the following "low molecular weight polynuclear aromatic hydrocarbon" compounds: Naphthalene, Acenaphthylene, Acenaphthene, Fluorene, Phenanthrene, and Anthracene. The LPAH criterion is not the sum of the criteria values for the individual LPAH compounds as listed.~~

~~((e)) (j) The HPAH criterion in Table IV represents the sum of the following "high molecular weight polynuclear aromatic hydrocarbon" compounds: Fluoranthene, Pyrene, Benz(a)anthracene, Chrysene, Total Benzofluoranthenes, Benzo(a)pyrene, Indeno(1,2,3,-c,d)pyrene, Dibenzo(a,h)-anthracene, and Benzo(g,h,i)perylene. The HPAH criterion is not the sum of the criteria values for the individual HPAH compounds as listed.~~

~~((f)) (k) The ~~((TOTAL BENZOFLUORANTHENES))~~ total benzofluoranthenes criterion in Table IV represents the sum of the concentrations of the "B," "J," and "K" isomers.~~

Table ((H)) IV  
 ((Puget Sound)) Marine Sediment  
 Sediment Cleanup Objectives and  
 Cleanup Screening Levels  
 ((and  
 Minimum Cleanup Levels)) —  
 Chemical Criteria

CHEMICAL PARAMETER	MG/KG DRY WEIGHT (PARTS PER MILLION (PPM) DRY)
ARSENIC	93
CADMIUM	6.7
CHROMIUM	270
COPPER	390
LEAD	530
MERCURY	0.59
SILVER	6.1
ZINC	960

CHEMICAL PARAMETER	MG/KG ORGANIC CARBON (PPM CARBON)
LPAH	780
NAPHTHALENE	170
ACENAPHTHYLENE	66
ACENAPHTHENE	57
FLUORENE	79
PHENANTHRENE	480
ANTHRACENE	1200
2-METHYLNAPHTHALENE	64
HPAH	5300
FLUORANTHENE	1200
PYRENE	1400
BENZ(A)ANTHRACENE	270
CHRYSENE	460
TOTAL BENZOFLUORANTHENES	450
BENZO(A)PYRENE	210
INDENO (1,2,3, C,D) PYRENE	88
DIBENZO (A,H) ANTHRACENE	33
BENZO(G,H,I)PERYLENE	78
1,2-DICHLOROBENZENE	2.3
1,4-DICHLOROBENZENE	9
1,2,4-TRICHLOROBENZENE	1.8
HEXACHLOROBENZENE	2.3
DIMETHYL PHTHALATE	53
DIETHYL PHTHALATE	110
DI-N-BUTYL PHTHALATE	1700
BUTYL-BENZYL PHTHALATE	64
BIS (2-ETHYLHEXYL) PHTHALATE	78
DI-N-OCTYL PHTHALATE	4500
DIBENZOFURAN	58
HEXACHLOROBUTADIENE	6.2
N-NITROSODIPHENYLAMINE	11
TOTAL PCB'S	65

CHEMICAL PARAMETER	UG/KG DRY WEIGHT (PARTS PER BILLION (PPB) DRY)
PHENOL	1200
2-METHYLPHENOL	63

CHEMICAL PARAMETER	UG/KG DRY WEIGHT (PARTS PER BILLION (PPB) DRY)
4-METHYLPHENOL	670
2,4-DIMETHYL-PHENOL	29
PENTACHLOROPHENOL	690
BENZYL ALCOHOL	73
BENZOIC ACID	650))

<u>Chemical Parameter</u>	<u>mg/kg Dry Weight (Parts per Million (ppm) Dry Weight)</u>	<u>mg/kg Dry Weight (Parts per Million (ppm) Dry Weight)</u>
	<u>Sediment Cleanup Objective</u>	<u>Cleanup Screening Level</u>
Arsenic	57	93
Cadmium	5.1	6.7
Chromium	260	270
Copper	390	390
Lead	450	530
Mercury	0.41	0.59
Silver	6.1	6.1
Zinc	410	960
<u>Chemical Parameter</u>	<u>mg/kg Organic Carbon (ppm carbon)</u>	<u>mg/kg Organic Carbon (ppm carbon)</u>
	<u>Sediment Cleanup Objective</u>	<u>Cleanup Screening Level</u>
LPAH	370	780
Naphthalene	99	170
Acenaphthylene	66	66
Acenaphthene	16	57
Fluorene	23	79
Phenanthrene	100	480
Anthracene	220	1200
2-Methyl Naphthalene	38	64
HPAH	960	5300
Fluoranthene	160	1200
Pyrene	1000	1400
Benz(a)anthracene	110	270
Chrysene	110	460
Total Benzofluoranthenes	230	450
Benzo(a)pyrene	99	210
Indeno(1,2,3 c,d) Pyrene	34	88
Dibenzo (a,h) Anthracene	12	33
Benzo (g,h,i) Perylene	31	78
1,2 Dichlorobenzene	2.3	2.3
1,4 Dichlorobenzene	3.1	9
1,2,4 Trichlorobenzene	0.81	1.8
Hexachlorobenzene	0.38	2.3
Dimethyl Phthalate	53	53
Diethyl Phthalate	61	110
Di-n-butyl Phthalate	220	1700
Butyl Benzyl Phthalate	4.9	64
Bis (2-ethylhexyl) Phthalate	47	78
Di-n-octyl Phthalate	58	4500

<b>Chemical Parameter</b>	<b>mg/kg Dry Weight (Parts per Million (ppm) Dry Weight)</b>	<b>mg/kg Dry Weight (Parts per Million (ppm) Dry Weight)</b>
Dibenzofuran	15	58
Hexachlorobutadiene	3.9	6.2
N-Nitrosodiphenyl-amine	11	11
Total PCBs	12	65
	<b>ug/kg Dry Weight (Parts per Billion (ppb) Dry Weight)</b>	<b>ug/kg Dry Weight (Parts per Billion (ppb) Dry Weight)</b>
Phenol	420	1200
2-Methylphenol	63	63
4-Methylphenol	670	670
2,4 Dimethyl Phenol	29	29
Pentachlorophenol	360	690
Benzyl Alcohol	57	73
Benzoic Acid	650	650

(3) ~~((Puget Sound))~~ **Marine sediment ((cleanup screening levels and minimum cleanup level)) - Biological criteria.** The biological effects criteria ~~((of this subsection))~~ in Table V establish the ~~((Puget Sound))~~ marine sediment cleanup objectives and cleanup screening ~~((level, and the Puget Sound marine sediment minimum cleanup level criteria.~~

~~(a) The acute and chronic effects biological tests of WAC 173-204-315(1) shall be used to:~~

~~(i) Identify the Puget Sound marine sediment cleanup screening level for the purpose of screening sediment station clusters of potential concern using the procedures of WAC 173-204-510(2); and~~

~~(ii) Identify the Puget Sound marine sediment cleanup screening level for the purpose of identifying station clusters of low concern and/or cleanup sites using the hazard assessment procedures of WAC 173-204-530(4); and/or~~

~~(iii) Identify the Puget Sound marine sediment minimum cleanup level to confirm minimum cleanup level determinations using the procedures of WAC 173-204-570(3).~~

~~(b) When using biological testing to determine if station clusters exceed the cleanup screening level or to identify the minimum cleanup level for a contaminated site, test results from at least two acute effects tests and one chronic effects test shall be evaluated.~~

~~(c) The biological tests shall not be considered valid unless test results for the appropriate control and reference sediment samples meet the performance standards described in WAC 173-204-315(2).~~

~~(d)) levels. The criteria of this section shall apply to marine sediments for toxicity to the benthic invertebrate community.~~

~~(a) The sediment cleanup objective biological criteria for a sampling station is exceeded when one of the biological test results is above the sediment cleanup objective as described in Table V.~~

~~(b) The cleanup screening level ((and minimum cleanup level)) biological criteria for a sampling station is exceeded when:~~

~~(i) Any two of the biological test((s)) results for a sampling station exceed the ((criteria of WAC 173-204-320(3); or one of)) sediment cleanup objective in Table V; or~~

~~(ii) One of the biological test results for a sampling station exceeds the cleanup screening level in Table V and the following ((test determinations is made)):~~

~~((i)) (A) Amphipod: The test sediment has a higher (statistically significant, t test,  $p \leq 0.05$ ) mean mortality than the reference sediment and the test sediment mean mortality is greater than a value represented by the reference sediment mean mortality plus thirty percent.~~

~~((ii)) (B) Larval: The test sediment has a mean survivorship of normal larvae that is less (statistically significant, t test, ( $p \leq 0.05$ ))  $p \leq 0.10$ ) than the mean normal survivorship in the reference sediment and the test sediment mean normal survivorship is less than seventy percent of the mean normal survivorship in the reference sediment (i.e., the test sediment has a mean combined abnormality and mortality that is greater than thirty percent relative to time-final in the reference sediment).~~

~~((iii)) (C) Benthic abundance: The test sediment has less than fifty percent of the reference sediment mean abundance of any two of the following major taxa: Class Crustacea, Phylum Mollusca or Class Polychaeta and the test sample abundances are statistically different (t test,  $p \leq 0.05$ ) from the reference abundances.~~

~~((iv)) (D) Juvenile polychaete: The test sediment has a mean individual growth rate of less than fifty percent of the reference sediment mean individual growth rate and the test sediment mean individual growth rate is statistically different (t test,  $p \leq 0.05$ ) from the reference sediment mean individual growth rate.~~

~~((4) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels human health criteria. Reserved: The department may determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.~~

~~(5) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels)) (c) The acute and chronic effects biological tests of Table VI shall be used to:~~

~~(i) Confirm designation of marine sediments for benthic toxicity. The department may require biological testing to confirm the designation of marine sediment which either passes or fails the chemical criteria established in subsection (2) of this section. If required, the sediment shall be tested using the procedures in (d) of this subsection.~~

~~(ii) Establish the marine sediment cleanup objective and cleanup screening level for identifying sediment station clusters of potential concern for benthic toxicity using the procedures of WAC 173-204-510(2); and~~

~~(iii) Establish the marine sediment cleanup objective or cleanup screening level for identifying station clusters of low concern using the procedures of WAC 173-204-510(2).~~

~~(d) To designate sediment quality using biological criteria, a minimum of the following shall be included in the suite of biological tests for each sediment sample as described in Table VI:~~

~~(A) Two acute effects tests; and~~

~~(B) One chronic test.~~

(e) The appropriate control and reference sediment samples shall meet the performance standards described in Table VI. Selection and use of reference sediment must be approved by the department and shall meet the performance standards of Table VI. The department may approve a different performance standard based on latest scientific knowledge.

(f) Use of alternate biological tests may be required by the department and shall be subject to the review and approval of the department under WAC 173-204-130(4).

(g) Any person who designates test sediments using the procedures of this section shall meet the sampling and testing plan requirements of WAC 173-204-600 and records management requirements of WAC 173-204-610. Test sediments designated using the procedures of this section shall be sampled and analyzed using methods approved by the department, and shall use an appropriate quality assurance/quality control program, as determined by the department.

(4) **Marine sediment - Other toxic, radioactive, biological, or deleterious substances criteria.** Other toxic, radioactive, biological, or deleterious substances in, or on, sediments shall be at or below levels which cause minor adverse effects in marine biological resources(~~(-or which correspond to a significant health risk to humans, as determined by the department)~~). The department shall determine

on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

~~((6) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels nonanthropogenically affected sediment criteria. Whenever the nonanthropogenically affected sediment quality is of a lower quality (i.e., higher chemical concentrations, higher levels of adverse biological response, or posing a higher threat to human health) than the applicable cleanup screening levels or minimum cleanup levels criteria established under this section, the existing sediment chemical and biological quality shall be identified on an area-wide basis as determined by the department, and used in place of the standards of WAC 173-204-520.))~~

**Table V:** Marine sediment cleanup objectives, cleanup screening levels, and performance standards for each biological test. C = Control; R = Reference; T = Test; F = Final; M = Mortality; N = Normal Survivorship expressed as actual counts; I = Initial count; MIG = Mean Individual Growth Rate expressed in mg/ind/day AFDW\*; ML = Mean Light output; BLD = Blank Corrected Light Decrease; SD = Significantly Different; an exceedance of the criteria requires a statistical significance at p = 0.05 for Amphipod Juvenile Polychaete, Microtox tests; an exceedance of the criteria requires a statistical significance at p = 0.10 for the Larval test.

<u>Biological Test/Endpoint</u>	<u>Performance Control</u>	<u>Standard Reference</u>	<u>Sediment Cleanup Objective for each biological test</u>	<u>Cleanup Screening Level for each biological test</u>
<b>Amphipod</b>				
<b>10-day Mortality</b>	$M_C < 10\%$	$M_R < 25\%$	$M_T > 25\%$ Absolute and $M_T$ vs. $M_R$ SD ( $p = 0.05$ )	$M_T - M_R > 30\%$ and $M_T$ vs. $M_R$ SD ( $p = 0.05$ )
<b>Larval</b>				
<b>Bivalve or Echinoderm Abnormality/Mortality</b>	$N_C / I > 0.70$		$N_T / N_R < 0.85$ and $N_T$ vs. $N_R$ SD ( $p = 0.10$ )	$N_T / N_R > 0.70$ and $N_T$ vs. $N_R$ SD ( $p = 0.10$ )
<b>Juvenile Polychaete</b>				
<b>Neanthes 28-day Growth</b>	$M_C < 10\%$ and $MIG_C > 0.72$ mg/individual/day (or case-by-case)	$MIG_R / MIG_C > 0.80$	$MIG_T / MIG_R < 0.70$ and $MIG_T$ vs. $MIG_R$ SD ( $p = 0.05$ )	$MIG_T / MIG_R < 0.50$ and $MIG_T$ vs. $MIG_R$ SD ( $p = 0.05$ )
<b>Microtox</b>				
<b>Microtox Decreased Luminescence</b>	case-by-case	case-by-case	$ML_T / ML_R < 0.80$ and $ML_T$ vs. $ML_R$ SD ( $p = 0.05$ )	

**Table VI:** Types of marine sediment biological tests, species, and applicable endpoints.

<u>Species/Class, biological test, and endpoint</u>	<u>Acute effects biological test</u>	<u>Chronic effects biological test</u>
Amphipod: <i>Rhepoxynius abronius</i> , <i>Ampelisca abdita</i> , <i>Eohaustorius estuarius</i>		
10-day Mortality	X	

<u>Species/Class, biological test, and endpoint</u>	<u>Acute effects biological test</u>	<u>Chronic effects biological test</u>
Larval: <i>Crassostrea gigas</i> (Pacific oyster), <i>Mytilus (edulis) galloprovincialis</i> (Blue mussel), <i>Strongylocentrotus purpuratus</i> (Purple sea urchin), <i>Dendraster excentricus</i> (Sand dollar)		
Mortality/Abnormality	X	
Juvenile Polychaete:		

<u>Species/Class, biological test, and endpoint</u>	<u>Acute effects biological test</u>	<u>Chronic effects biological test</u>
<i>Neanthes arenaceodentata</i>		
28-day Growth		X
Microtox: <i>Vibrio fischeri</i>		
15-minute exposure: Decreased luminescence		X
Benthic Infauna: Class Crustacea, Polychaeta, Phylum Mollusca		X

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-530 Hazard assessment and site identification.** (1) **Purpose.** A hazard assessment shall be performed to gather existing and available information to further characterize each station cluster of potential concern identified per WAC 173-204-510.

(2) **Hazard assessment requirements.** ~~((Onsite))~~ On-site dischargers, lessees, landowners, and adjacent dischargers shall submit, upon the department's request, all existing and available information or, if determined necessary by the department, shall perform sampling for a known or suspected release that would enable the department to:

(a) Determine the concentration and/or areal extent and depth of sediment contamination at the station cluster of potential concern by:

(i) Identifying the contaminants exceeding the applicable sediment ~~((quality standards))~~ cleanup objectives of WAC ~~((173-204-320 through 173-204-340))~~ 173-204-562 and 173-204-563;

(ii) Identifying individual stations within the station cluster of potential concern which exceed the sediment cleanup screening levels criteria of WAC ~~((173-204-520))~~ 173-204-562 and 173-204-563;

(iii) Identifying the level of toxicity to the applicable biological test organisms of WAC ~~((173-204-320 through 173-204-340))~~ 173-204-562 and 173-204-563;

(iv) Determining where the applicable sediment ~~((quality standards))~~ cleanup objectives of WAC ~~((173-204-320 through 173-204-340))~~ 173-204-562 and 173-204-563, for any given contaminant, is met;

(v) Determining if concentrations of chemicals exist that ~~((potentially present a significant threat to human health))~~ exceed applicable cleanup screening levels of WAC 173-204-560;

(vi) Defining the location where the ~~((minimum cleanup))~~ cleanup screening level as defined in WAC ~~((173-204-570))~~ 173-204-560 is met.

(b) Identify and characterize the present and historic source or sources of the contamination.

(c) Identify the location of sediment impact zones authorized under WAC 173-204-415.

(d) Identify sensitive resources in the vicinity of the station cluster of potential concern.

(e) ~~((Provide))~~ Compile other information as determined necessary by the department for ~~((ranking))~~ evaluating sites under WAC ~~((173-204-540))~~ 173-204-530.

~~((3))~~ ~~The department shall also~~ (f) Compile existing and available information from other federal, state, and local governments ~~((that pertain to the topics in subsection (2) of this section)).~~

~~((4))~~ (3) **Identification of cleanup sites.** To identify cleanup sites, the department shall use all available information of acceptable quality gathered from the hazard assessment to evaluate station clusters of potential concern identified pursuant to WAC 173-204-510(2). For the purpose of identifying a cleanup site per the procedures of this subsection, three stations with the highest contaminant concentration for any particular contaminant or the highest degree of biological effects as identified in WAC ~~((173-204-520))~~ 173-204-562 and 173-204-563 are selected from a station cluster of potential concern. This procedure may be repeated for multiple chemicals ~~((identified in WAC 173-204-520,))~~ recognizing that the three stations with the highest concentration for each particular contaminant may be different and the respective areas for all chemicals may overlap. The department shall review the list of station clusters of potential concern to identify cleanup sites via the following process:

(a) ~~((Identify if available, three stations within the station cluster of potential concern with the highest level of biological effects for the biological tests identified in WAC 173-204-315(1)).~~

~~((b))~~ Station clusters of potential concern ~~((where the level of biological effects for any three stations within the station cluster of potential concern exceeds the cleanup screening levels of WAC 173-204-520(3)))~~ that meet the conditions in WAC 173-204-510 (2)(a)(ii) or (b)(i) shall be defined as cleanup sites.

~~((c))~~ ~~Identify if available, the three stations within a station cluster of potential concern with the highest concentration of each chemical contaminant identified in WAC 173-204-520, Cleanup screening levels criteria.)~~ (b) For the purpose of identifying a cleanup site per the procedures of this subsection, stations that meet the biological standards of WAC ~~((173-204-520))~~ 173-204-562(3) through 173-204-563(3) shall not be included in the evaluation of chemical contaminant concentrations for benthic community toxicity.

~~((d))~~ ~~For each contaminant identified in (c) of this subsection, determine the average concentration for the contaminant at the three stations identified in (c) of this subsection.~~

(e) Station clusters of potential concern for which any average chemical concentration identified in (d) of this subsection exceeds the cleanup screening level chemical criteria of Table III shall be defined as cleanup sites.

~~((f))~~ (c) After completion of the hazard assessment, if ~~((neither of))~~ the conditions of (a) or (b) ~~((or (e)))~~ of this subsection do not apply, then the station cluster is defined as a station cluster of low concern for benthic community toxicity.

~~((g))~~ (d) Station clusters of potential concern where the department determines that ~~((any))~~ each of three stations within the station cluster of potential concern exceed the ~~((sediment cleanup screening levels))~~ applicable cleanup screening level human health and background criteria in

WAC 173-204-560(4) or the other toxic, radioactive, biological, or deleterious substances criteria or the nonanthropogenically affected criteria of WAC ((173-204-520)) 173-204-562 and 173-204-563, ((shall)) may be defined as cleanup sites or areas for potential further investigation.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-540 ((Ranking)) Evaluation and ((list)) listing of sites.** (1) **Purpose.** The department shall prepare and maintain a list of contaminated sediment sites in the order of their relative ((hazard ranking)) risk to human health and the environment. From this list, the department shall select sites where action shall be taken.

(2) **Site ((ranking)) evaluation.** The department shall evaluate each sediment cleanup site identified by the procedures in WAC ((173-204-530)) 173-204-520 on a consistent basis using ((the procedure described in *Sediment Ranking System ("SEDRANK"), January 1990, and all additions and revisions thereto or other*)) procedures approved by the department. The purpose of ((ranking)) the evaluation is to estimate, based on technical information compiled during the hazard assessment procedures in WAC ((173-204-530)) 173-204-520, the relative potential risk posed by the site to human health and the environment. Information obtained during the hazard assessment, ((plus any additional data specified in "SEDRANK,") shall be included in the site ((hazard ranking)) evaluation.

(3) **Considerations in ((ranking)) site evaluation.** In conducting sediment site ((ranking)) evaluations, the department shall assess both human health hazard and ecological hazard, and consider chemical toxicity, affected resources, and site characteristics for both types of hazards. The department shall also use best professional judgment and other information as necessary on a case-by-case basis to conduct site ((ranking)) evaluations.

(4) **Site ((reranking)) reevaluations.** The department may, at its discretion, ((rerank)) reevaluate a site. To ((rerank)) reevaluate a site, the department shall use any additional information within the scope of the ((hazard ranking)) evaluation criteria and best professional judgment to establish that a significant change ((in rank)) should result.

(5) **(((List)) Listing of ((ranked)) sites.**

(a) Contaminated sediment sites ((that are ranked via "SEDRANK") shall be placed on a list ((in the order of their relative hazard ranking)). The list shall describe the current status of cleanup action at each site ((and be updated on an annual basis. The department may change a site's status to reflect current conditions on a more frequent basis. The status for each site shall be identified as one or more of the following:

- (i) Sites awaiting cleanup action;
- (ii) Sites where voluntary, incidental, partial or department initiated cleanup actions, as defined in WAC 173-204-550, are in progress;
- (iii) Sites where a cleanup action has been completed and confirmational monitoring is underway;
- (iv) Sites with sediment recovery zones authorized under WAC 173-204-590; and/or

(v) ~~Other categories established by the department).~~

(b) The department shall routinely publish and make the list available to be used in conjunction with a review of ongoing and proposed regulatory actions to determine where and when a cleanup action should be taken. The department shall also make the list available to landowners and dischargers at or near listed sites, and to the public.

(6) **Site delisting.**

(a) The department may remove a site from the list only after it has determined that:

(i) All cleanup actions ((except)) including confirmational monitoring ((have been completed and compliance with the site cleanup study and report)) and all other actions required in the cleanup action plan or equivalent document under WAC 173-204-580, have been completed and all sediment cleanup standard(s) ((has)) have been achieved; or

(ii) The listing of the site was erroneous.

(b) A site owner or operator may request that a site be removed from the list by submitting a petition to the department. The petition shall state the reason for the site delisting request, and as determined appropriate by the department, shall include thorough documentation of all investigations performed, all cleanup actions taken, and all compliance monitoring data and results to demonstrate to the department's satisfaction that the ((site)) sediment cleanup standards have been achieved. The department may require payment of costs incurred((, including an advance deposit,)) for review and verification of the work performed. The department shall review such petitions, however the timing of the review shall be at its discretion and as resources may allow.

(c) The department shall maintain a record of sites that have been removed from the list under (a) of this subsection. This record shall be made available to the public on request.

(d) The department shall provide public notice and an opportunity to comment when the department proposes to remove a site from the list.

(7) **Site relisting ((of sites)).** The department may relist a site which has previously been removed if it determines that the site requires further cleanup action.

(8) ~~((Delisting notice. The department shall provide public notice and an opportunity to comment when the department proposes to remove a site from the list.~~

~~((9)) Relationship to hazardous sites list.~~ The department may additionally evaluate cleanup sites on the site list developed under subsection (5) of this section for possible inclusion on the hazardous sites list published under WAC 173-340-330.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-550 Types of cleanup and authority.**

(1) **Purpose.** ((The department acknowledges that cleanups of contaminated sediment sites can occur under the authority of chapter 90.48 or 70.105D RCW. Sediment cleanups may also be initiated by)) Cleanup actions at sites and sediment cleanup units may be conducted under the authority of chapter 70.105D RCW or the federal government pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) (CERCLA). This

section describes the department's role in ~~((department initiated))~~ these and other cleanup actions.

(2) **Administrative authority.** The department shall use best professional judgment and other information as necessary on a case-by-case basis to determine the appropriate administrative authority for conducting ~~((;))~~ or requiring ~~((contaminated sediment))~~ cleanup actions ~~((based on, but not limited to,))~~. The department may initiate a cleanup action under this chapter or may determine that another authority is more appropriate. When determining the appropriate administrative authority at a site, the department's decision may include the following considerations:

(a) Source of contaminants requiring cleanup including spills, dredging actions, and wastewater and/or storm water discharges;

(b) Significance of contamination threat to human health and the environment including the degree of contamination and types and number of contaminants;

(c) Public ~~((perception))~~ comments received concerning the contaminant threat to human health and the environment;

(d) ~~((Personal or corporate financial status of the landowner(s) and/or discharger(s);~~

~~((;))~~ Enforcement compliance history of the landowner(s) and/or discharger(s);

~~((;))~~ (e) Status of existing or pending federal, state, or local legal orders or administrative actions; and

~~((;))~~ (f) Size of cleanup action proposed or determined necessary.

(3) ~~((The types of cleanup actions below establish scenarios recognized by the department which may occur to effect cleanup of contaminated sediment sites. All of these types of cleanup actions shall be subject to administrative review and approval of the department under chapters 90.48 and/or 70.105D RCW.~~

~~((a))~~ Department initiated cleanup. Department initiated cleanup actions occur when the department uses its authority under chapter 90.48 and/or 70.105D RCW to conduct or require and/or otherwise effect cleanup to meet the intent of this chapter.

~~((b))~~ Voluntary cleanup. Voluntary cleanup actions are initiated by parties other than the department. The department shall encourage voluntary cleanup actions whenever possible, and as early as possible, to meet the intent of this chapter.

~~((c))~~ Incidental cleanup. Incidental cleanup actions are conducted when other state or federally permitted activities are ongoing in and/or around the contaminated sediment site. Early coordination of incidental cleanup actions with the department is encouraged to meet the intent of this chapter, chapter 70.105D RCW, and chapter 90.48 RCW, as appropriate.

~~((d))~~ Partial cleanup. Partial cleanup actions may be conducted when completion of cleanup study requirements under WAC 173-204-560 has identified and proposed discrete site units and cleanup standards, the department has approved the selection of the partial cleanup alternative per the standards of WAC 173-204-580, and the department has determined that awaiting action or decision on conducting a complete site cleanup would have a net detrimental effect on the environment or human health.

~~((e))~~ CERCLA cleanup. Pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, the department may identify chapter 173-204 WAC as an applicable state requirement for cleanup actions conducted by the federal government. **Types of cleanups.** The following administrative options may be used to conduct cleanup actions at sites and sediment cleanup units. These options shall be subject to review and approval by the department under chapter 70.105D RCW.

**(a) Department-conducted or supervised cleanups.** The department may conduct or require others to conduct cleanup actions at sites or sediment cleanup units under chapter 70.105D RCW.

**(b) Federal-conducted or supervised cleanups.** The federal government may conduct or require others to conduct cleanup actions at sites or sediment cleanup units under CERCLA. When evaluating federal cleanup actions, the department shall consider all requirements in this chapter authorized under chapter 70.105D RCW to be legally applicable requirements under 42 U.S.C. 9621(d). Federal cleanup actions may be used by the department to meet the requirements of this chapter provided:

(i) The cleanup action is consistent with the requirements in this chapter;

(ii) The state has concurred with the cleanup action; and

(iii) An opportunity was provided for the public to comment on the cleanup action.

**(c) Incidental cleanups.** Incidental cleanup actions may be conducted when other state or federally permitted activities are ongoing in and/or around the site. Early coordination of incidental cleanup actions with the department is encouraged to ensure such actions meet the requirements in this chapter and chapter 70.105D RCW.

**AMENDATORY SECTION** (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-560 ~~((Cleanup))~~ Remedial investigation and feasibility study.** (1) **Purpose.** ~~((This section describes cleanup study plan and report standards which meet the intent of cleanup actions required under authority of chapter 90.48 and/or 70.105D RCW, and/or this chapter. Cleanup actions required under authority of chapter 70.105D RCW shall also meet all standards of chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation. The cleanup study plan and report standards in this chapter include activities to collect, develop, and evaluate sufficient information to enable consideration of cleanup alternatives and selection of a site-specific sediment cleanup standard prior to making a cleanup decision. Each person performing a cleanup action to meet the intent of this chapter shall submit a cleanup study plan and cleanup study report to the department for review and written approval prior to implementation of the cleanup action. The department may approve the cleanup study plan as submitted, may approve the cleanup study plan with appropriate changes or additions, or may require preparation of a new cleanup study plan.))~~ The purpose of a remedial investigation/feasibility study is to collect, develop, and evaluate sufficient information regarding a site or sediment cleanup unit for the department to establish sedi-

ment cleanup standards and select a cleanup action under this chapter.

(2) **Scope** ~~((of cleanup study plan)).~~ The scope of a ~~((cleanup study plan shall))~~ remedial investigation/feasibility study depends on ~~((the specific site informational needs, the site hazard.))~~ many factors, including the nature and extent of contamination, the exposure pathways of concern, the natural resources potentially impacted by the contamination, the characteristics of the site or sediment cleanup unit, the type of cleanup action ~~((proposed))~~ alternatives likely to be evaluated under WAC 173-204-570 through 173-204-580, and the authority cited by the department to require cleanup. ~~((In establishing the necessary scope of the cleanup study plan, the department may consider cost mitigation factors, such as the financial resources of the person(s) responsible for the cleanup action.))~~ In all cases, sufficient information must be collected, developed, and evaluated to enable the ~~((appropriate selection of a))~~ department to establish sediment cleanup standards ~~((under WAC 173-204-570 and a cleanup action decision under WAC 173-204-580. The sediment cleanup study plan shall address.))~~ and select cleanup actions under this chapter.

**(3) Administrative requirements.**

(a) Unless otherwise directed by the department, a remedial investigation/feasibility study must be completed before a cleanup action is selected under WAC 173-204-570 and 173-204-580.

(b) Before conducting a remedial investigation, a work plan must be submitted to and approved by the department.

(c) As directed by the department, a remedial investigation and a feasibility study may be conducted as separate steps in the cleanup process and submitted as separate reports or combined into a single step and report.

(d) Remedial investigation and feasibility study reports must be submitted to the department for review and approval.

(4) **Remedial investigation work plan.** The remedial investigation work plan shall include the following information: (a) Public ~~((information/education))~~ participation plan;

(b) ~~((Site investigation and cleanup alternatives evaluation;~~

(e)) A summary of available information regarding the site;

(c) A conceptual site model;

(d) Cleanup action alternatives that are likely to be considered in the feasibility study;

(e) Sampling plan and recordkeeping in compliance with WAC 173-204-600 through 173-204-610 and department guidance; and

~~((f))~~ (f) Site safety~~((;~~

~~((3))~~ (3) Cleanup study plan public information/education requirements) plan to meet the requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and regulations promulgated pursuant thereto. These requirements are subject to enforcement by the designated federal and state agencies. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(g) A schedule for completion of the remedial investigation/feasibility study; and

(h) Other information as required by the department.

(5) **Public participation plan requirements.** The ~~((cleanup study))~~ public participation plan shall encourage coordinated and effective public involvement commensurate with the nature of the proposed cleanup action, the level of public concern, and the existence of, or potential for adverse effects on biological resources and/or a threat to human health. The ~~((cleanup study))~~ plan shall ~~((address proposed activities for))~~ include the following ~~((subjects))~~ information:

(a) When public notice will occur, the length of the comment periods accompanying each notice, the potentially affected vicinity, and any other areas to be provided notice;

(b) Where public information ~~((repositories))~~ will be located to provide ~~((site))~~ information ~~((to the public))~~ about the site;

(c) Methods for identifying the public's concerns~~((; e.g.,))~~ such as interviews, questionnaires, and community group meetings~~((; etc.))~~;

(d) Methods for providing information to the public~~((; e.g.,))~~ such as press releases, public meetings, fact sheets, ~~((etc.))~~ and listservs;

(e) Coordination of public participation requirements mandated by other federal, state, or local laws;

(f) Amendments to the planned public involvement activities; and

(g) Any other ~~((elements that))~~ information required by the department ~~((determines to be appropriate for inclusion in the cleanup study plan)).~~

~~((4))~~ Cleanup study plan site investigation and cleanup alternatives evaluation requirements. The content of the cleanup study plan for the site investigation and cleanup alternatives evaluation is determined by the type of cleanup action selected as defined under WAC 173-204-550. As determined by the department, the cleanup study plan shall address the following subjects: (6) **Remedial investigation report.** The remedial investigation report shall include the following information:

(a) General site information. General information, including: Project title; name, address, and phone number of project coordinator; legal description of the cleanup site; area and volume dimensions of the site; present and past owners and operators; present owners and operators of contaminant source discharges to the site~~((; chronological listing of past owners and operators of contaminant source discharges to the site))~~ and their respective operational history; and other pertinent information ~~((determined))~~ required by the department.

(b) Site conditions map. An existing site conditions map which illustrates site features as follows:

(i) Property boundaries~~((;))~~;

(ii) The site boundary as defined by the individual contaminants exceeding the ~~((applicable))~~ proposed sediment ~~((quality))~~ cleanup standards ~~((of))~~ as defined in WAC ~~((173-204-320 through 173-204-340))~~ 173-204-560. Delineations shall be made at the point where the concentration of the contaminants would meet the:

(A) Proposed sediment cleanup standards;

(B) Proposed sediment cleanup objectives; ~~((and~~

~~(B) Minimum cleanup level~~) (C) Proposed cleanup screening levels; and

~~((C) Recommended cleanup standards)~~ (D) Proposed sediment cleanup unit boundary, if applicable;

(iii) Surface and subsurface ~~structures~~ topography(~~(-~~

~~(iv) Surface and subsurface structures.~~

~~(v))~~;

~~(iv) Utility lines~~(~~(-~~

~~((vi))~~ (v) Navigation lanes(~~(-~~

~~(vii) Current and ongoing sediment sources.~~

~~(viii))~~; and

(vi) Other pertinent information determined by the department.

(c) Site investigation. Sufficient investigation to characterize the distribution of sediment contamination (~~(present at the site)~~), and the threat or potential threat to human health and the environment. Where applicable to the site, these investigations shall address the following:

(i) Surface water and sediments. Investigations of sediment, surface water hydrodynamics, and sediment transport mechanisms to characterize significant hydrologic features such as:

(A) Site surface water drainage patterns, quantities and flow rates(~~(-)~~);

(B) Areas of sediment erosion and deposition including estimates of sedimentation rates(~~(-, and actual or potential)~~);

(C) Contaminant migration routes to and from the site and within the site(~~(- Sufficient surface water and sediment sampling shall be performed to adequately characterize the)~~);

(D) Areal and vertical distribution and concentrations of contaminants in sediment.

(E) Recontamination potential of sediments which are likely to influence the type and rate of contaminant migration, or are likely to affect the ability to implement alternative cleanup actions (~~(shall be characterized)~~);

(ii) Geology and groundwater system characteristics. Investigations of site geology and hydrogeology to (~~(adequately)~~) characterize the physical properties and distribution of sediment types, and the characteristics of groundwater flow rate, groundwater gradient, groundwater discharge areas, and groundwater quality data which may affect site cleanup action alternatives evaluations;

(iii) Climate. Information regarding local and regional climatological characteristics which are likely to affect surface water hydrodynamics, groundwater flow characteristics, and migration of sediment contaminants such as: Seasonal patterns of rainfall; the magnitude and frequency of significant storm events; and prevailing wind direction and velocity;

(iv) Land use. Information characterizing human populations exposed or potentially exposed to sediment contaminants released at or from the site and present and proposed uses and zoning for shoreline areas contiguous with the site; and

(v) Natural resources and (~~(ecology)~~) habitat. Information to determine the impact or potential impact of sediment contaminants from the site on natural resources and (~~(ecology)~~) sensitive habitat of the area such as(~~(- Sensitive environment, local and regional habitat,))~~ spawning areas, nurs-

ery grounds, shellfish or eelgrass beds and other plant and animal species(~~(-, and other environmental receptors)~~).

(d) (~~(Sediment)~~) Current and potential contaminant sources. A description of the location, quantity, areal and vertical extent, concentration and sources of active and inactive waste disposal and other sediment contaminant discharge sources (~~(which affect or potentially affect the site)~~). Where determined relevant by the department, the following information shall be obtained by the department from the responsible discharger:

(i) The physical and chemical characteristics, and the biological effects of site sediment contaminant sources;

(ii) The status of source control actions for permitted and unpermitted (~~(site sediment)~~) contaminant sources; and

(iii) A recommended compliance time frame for (~~(known)~~) permitted (~~(and unpermitted site sediment)~~) contaminant sources which affect or potentially affect implementation of the timing and scope of the site cleanup action alternatives.

(e) (~~(Human health risk assessment. The current and potential threats to human health that may be posed by sediment site contamination shall be evaluated using a risk assessment procedure approved by the department.~~

~~(f))~~ Any other information required by the department.

(7) Feasibility study report. The feasibility study report shall include the following:

(a) If the feasibility study is not combined with the remedial investigation in one report, a summary of the remedial investigation results including:

(i) Conceptual site model to provide the basis from which cleanup action alternatives are developed and evaluated;

(ii) The proposed biologically active zone;

(iii) For each contaminant at the site, the proposed sediment cleanup standards; and

(iv) Maps, cross-sections, and calculations illustrating the location, estimated amount and concentration distribution of hazardous substances above proposed sediment cleanup standards and the proposed sediment cleanup objective and cleanup screening level;

(b) Results of any additional investigation conducted after completion of the remedial investigation report;

(c) Cleanup action alternatives. Each (~~(cleanup)~~) feasibility study (~~(plan)~~) shall include an evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the site(~~(-~~

~~(i) The proposed site cleanup alternatives may include establishment of site units, as defined in WAC 173-204-200(24), with individual cleanup standards within the range required by WAC 173-204-570, based on site physical characteristics and complexity, and cleanup standard alternatives established on consideration of cost, technical feasibility, and net environmental impact.~~

~~(ii) The proposed site cleanup alternatives may include establishment)~~ and be evaluated using the requirements in WAC 173-204-570;

(d) Identification and evaluation of a reasonable number and type of alternatives;

(e) Identification of alternatives eliminated that do not meet the requirements in WAC 173-204-570;

(f) Documentation of the alternatives evaluation process. For each alternative evaluated include the following:

(i) The location and estimated amount of each contaminant to be removed or treated by the alternative and the estimated time frame in which removal or treatment will occur; and

(ii) The location, estimated amount, and projected concentration distribution of each contaminant remaining on-site above proposed sediment cleanup levels after implementation of the alternative;

(g) The preferred remedy and the basis for selection;

(h) Identification of proposed sediment cleanup units within the site, if applicable;

(i) Applicable local, state and federal laws specific to the proposed preferred remedy, including a description of permit/approval conditions identified in consultation with the permitting agencies;

(j) Identification of ((a)) any proposed sediment recovery zone ((as authorized)) and justification for this zone under WAC 173-204-590((Sediment recovery zones)). Establishment or expansion of a sediment recovery zone shall not be used as a substitute for active cleanup actions, when such actions are practicable and meet the ((standards)) requirements of WAC ((173-204-580)) 173-204-570. ((The cleanup study plan shall include the following information for evaluation of sediment recovery zone alternatives:

(A) The time period during which a sediment recovery zone is projected to be necessary based on source loading and net environmental recovery processes determined by application of the department's sediment recovery zone computer models "CORMIX," "PLUMES," and/or "WASP," or an alternate sediment recovery zone model(s) approved by the department under WAC 173-204-130(4) as limited by the standards of this section and the department's best professional judgment;

(B) The legal location and landowner(s) of property proposed as a sediment recovery zone;

(C) Operational terms and conditions including, but not limited to proposed confirmational monitoring actions for discharge effluent and/or receiving water column and/or sediment chemical monitoring studies and/or bioassays to evaluate ongoing water quality, sediment quality, and biological conditions within and adjacent to the proposed or authorized sediment recovery zone to confirm source loading and recovery rates in the proposed sediment recovery zone.

(D) Potential risks posed by the proposed sediment recovery zone to human health and the environment;

(E) The technical practicability of elimination or reduction of the size and/or degree of chemical contamination and/or level of biological effects within the proposed sediment recovery zone; and

(F) Current and potential use of the sediment recovery zone, surrounding areas, and associated resources that are, or may be, affected by releases from the zone.

(G) The need for institutional controls or other site use restrictions to reduce site contamination risks to human health.

(iii) A phased approach for evaluation of alternatives may be required for certain sites, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of cleanup action alternatives that pass the initial screening shall consider the following factors:

(A) Overall protection of human health and the environment, time required to attain the cleanup standard(s), and on-site and offsite environmental impacts and risks to human health resulting from implementing the cleanup alternatives;

(B) Attainment of the cleanup standard(s) and compliance with applicable federal, state, and local laws;

(C) Short-term effectiveness, including protection of human health and the environment during construction and implementation of the alternative; and

(D) Long-term effectiveness, including degree of certainty that the alternative will be successful, long-term reliability, magnitude of residual, biological and human health risk, and effectiveness of controls for ongoing discharges and/or controls required to manage treatment residues or remaining wastes cleanup and/or disposal site risks;

(g) Ability to be implemented. The ability to be implemented including the potential for landowner cooperation, consideration of technical feasibility, availability of needed offsite facilities, services and materials, administrative and regulatory requirements, scheduling, monitoring requirements, access for construction, operations and monitoring, and integration with existing facility operations and other current or potential cleanup actions;

(h) Cost, including consideration of present and future direct and indirect capital, operation, and maintenance costs and other foreseeable costs;

(i) The degree to which community concerns are addressed;

(j) The degree to which recycling, reuse, and waste minimization are employed; and))

(k) Proposed monitoring plan during and after cleanup consistent with the provisions in WAC 173-204-600;

(l) Environmental impact. Sufficient information shall be provided to fulfill the requirements of chapter 43.21C RCW, the State Environmental Policy Act, for the proposed preferred remedy. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated shall be included.

((5) Cleanup study plan — sampling plan and record-keeping requirements. The cleanup study plan shall address proposed sampling and recordkeeping activities to meet the standards of WAC 173-204-600, Sampling and testing plan standards, and WAC 173-204-610, Records management, and the standards of this section.

(6) Cleanup study plan site safety requirements. The cleanup study plan shall address proposed activities to meet the requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and

~~regulations promulgated pursuant thereto. These requirements are subject to enforcement by the designated federal and state agencies. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.~~

~~(7) Cleanup study report. Each person performing a cleanup action to meet the intent of this chapter shall submit a cleanup study report to the department for review and written approval of a cleanup decision prior to implementation of the cleanup action. The sediment cleanup study report shall include the results of cleanup study site investigations conducted pursuant to subsection (4) of this section, and preferred and alternate cleanup action proposals based on the results of the approved cleanup study plan.~~

~~(8) Sampling access. In cases where the person(s) responsible for cleanup is not able to secure access to sample sediments on lands subject to a cleanup study plan approved by the department, the department may facilitate negotiations or other proceedings to secure access to the lands. Requests for department facilitation of land access for sampling shall be submitted to the department in writing by the person(s) responsible for the cleanup action study plan:)) (m) Any other information required by the department.~~

#### NEW SECTION

**WAC 173-204-561 Sediment cleanup levels based on protection of human health. (1) Applicability.** This section defines sediment cleanup objectives and cleanup screening levels for contaminants based on protection of human health. They are used to:

(a) Identify and assess the hazard of sites under WAC 173-204-510 and 173-204-520; and

(b) Establish sediment cleanup levels for sites and sediment cleanup units under WAC 173-204-560.

(2) **Sediment cleanup objectives.** Sediment cleanup objectives based on protection of human health shall be calculated using the following:

(a) Target risk levels. Sediment cleanup objectives based on protection of human health shall be at least as protective as the following sediment concentrations:

(i) Noncarcinogens. For noncarcinogens, sediment concentrations that are estimated to result in no acute or chronic toxic effects on human health as determined using a hazard quotient of one. If there are multiple noncarcinogens and/or exposure pathways at the site and the hazard index for the site exceeds one, then the sediment cleanup objectives shall be adjusted downward in accordance with WAC 173-340-708 or other methods approved by the department; and

(ii) Carcinogens. For known or suspected carcinogens, sediment concentrations for which the upper bound on the estimated lifetime excess cancer risk for individual carcinogens is less than or equal to one in one million ( $1 \times 10^{-6}$ ). If there are multiple carcinogens and/or exposure pathways at the site and the total lifetime excess cancer risk for the site exceeds one in one hundred thousand ( $1 \times 10^{-5}$ ), then the sediment cleanup objectives shall be adjusted downward in accordance with WAC 173-340-708 or other methods approved by the department.

(b) Reasonable maximum exposure. Sediment cleanup objectives and cleanup screening levels for contaminants based on protection of human health shall be calculated using reasonable maximum exposure scenarios that reflect the highest exposure that is reasonably expected to occur under current and potential future site use conditions.

(i) Default scenario. Except as provided under (b)(ii) of this subsection, the reasonable maximum exposure scenario for a site shall be tribal consumption of fish and shellfish. The department shall consider the following information on a site-specific basis when selecting or approving the exposure parameters used to represent the reasonable maximum exposure scenario:

(A) Historic, current, and potential future tribal use of fish and shellfish from the general vicinity of the site.

(B) Relevant studies and best available science related to fish consumption rates.

(C) The total fish and shellfish in an individual's diet that is obtained, or has the potential to be obtained, from the general vicinity of the site. This value depends on the ability of the aquatic habitat within the general vicinity of the site to support a department approved fish and shellfish consumption rate under current and future site use conditions.

(D) The size of the site relative to the fish and shellfish home range.

(E) Other information determined by the department to be relevant.

(ii) Site-specific scenario. The department may approve an alternate reasonable maximum exposure scenario for the site in accordance with WAC 173-340-708 and 173-340-702 (14) through (16).

(c) Toxicity parameters. For toxicological parameters, values established by the United States Environmental Protection Agency (USEPA) and available through the Integrated Risk Information System (IRIS) data base shall be used. If the value for a toxicological parameter is not available through IRIS, other sources shall be used. When evaluating the appropriateness of using other sources, the department may use the hierarchy in the following document: USEPA, Office of Solid Waste and Emergency Response, Directive 9285.7-53, "Human Health Toxicity Values in Superfund Risk Assessments."

#### **(3) Cleanup screening levels.**

(a) General. Cleanup screening levels based on protection of human health shall be calculated using the factors in (b) of this subsection and in subsection (2)(b) through (c) of this section.

(b) Target risk levels. Cleanup screening levels based on protection of human health shall be at least as protective as the following sediment concentrations:

(i) Noncarcinogens. For noncarcinogens, sediment concentrations that are estimated to result in no acute or chronic toxic effects on human health as determined using a hazard quotient of one. If there are multiple noncarcinogens and/or exposure pathways at the site and the hazard index for the site exceeds one, then the cleanup screening levels shall be adjusted downward in accordance with WAC 173-340-708 or other methods approved by the department; and

(ii) Carcinogens. For known or suspected carcinogens, sediment concentrations for which the upper bound on the

estimated lifetime excess cancer risk for individual carcinogens is less than or equal to one in one hundred thousand ( $1 \times 10^{-5}$ ). If there are multiple carcinogens and/or exposure pathways at the site and the total lifetime excess cancer risk for the site exceeds one in one hundred thousand ( $1 \times 10^{-5}$ ), then the cleanup screening levels shall be adjusted downward in accordance with WAC 173-340-708 or other methods approved by the department.

#### NEW SECTION

**WAC 173-204-563 Sediment cleanup levels based on protection of the benthic community in freshwater sediment.** (1) **Applicability.** This section defines sediment cleanup objectives and cleanup screening levels for contaminants based on protection of the benthic community in freshwater sediment. They are used to:

(a) Identify and assess the hazard of sites under WAC 173-204-510 and 173-204-520; and

(b) Establish sediment cleanup levels for sites and sediment cleanup units under WAC 173-204-560.

(2) **Freshwater sediment - Chemical criteria.** The chemical concentration criteria in Table VII establish the sediment cleanup objectives and cleanup screening levels chemical criteria for freshwater sediment. The criteria of this section shall apply to freshwater sediments for toxicity to the benthic community.

(a) The sediment cleanup objectives of this section establish a no adverse effects level, including no acute or chronic adverse effects, on the benthic community. Chemical concentrations at or below the sediment cleanup objectives correspond to sediment quality that results in no adverse effects to the benthic community.

(b) The cleanup screening levels of this section establish a minor adverse effects level, including acute or chronic effects, on the benthic community. Chemical concentrations at or below the cleanup screening level but greater than the sediment cleanup objective correspond to sediment quality that results in minor adverse effects to the benthic community. The freshwater chemical and biological cleanup screening levels establish minor adverse effects as the level above which station clusters of potential concern are defined and may be defined as potential cleanup sites for benthic community toxicity and at or below which station clusters of low concern are defined, per the procedures identified in WAC 173-204-510.

(c) The cleanup screening level chemical criteria is exceeded when the sediment chemical concentration for a single chemical is above the cleanup screening level in Table VII.

(d) The sediment cleanup objective chemical criteria is exceeded when the sediment chemical concentration for a single chemical is above the sediment cleanup objective in Table VII.

(e) For purposes of this section, where laboratory analysis indicates a chemical is not detected in a sediment sample, the detection limit and the practical quantitation limit shall be reported and shall be at or below the freshwater sediment cleanup objectives chemical criteria value in Table VII.

(f) Where chemical criteria in Table VII represent the sum of individual compounds or isomers, the following methods shall be applied:

(i) Where chemical analyses identify an undetected value for every individual compound/isomer, then the single highest detection limit shall represent the sum of the respective compounds/isomers; and

(ii) Where chemical analyses detect one or more individual compound/isomers, only the detected concentrations will be added to represent the group sum.

(g) The chemical criteria in Table VII represent concentrations in parts per million dry weight normalized.

(h) The total polycyclic aromatic hydrocarbon (PAH) criterion in Table VII represents the sum of the following polycyclic aromatic hydrocarbon compounds: 1-methylnaphthalene, 2-methylnaphthalene, acenaphthene, acenaphthylene, anthracene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(ghi)perylene, benzo(k)fluoranthene, chrysene, dibenz(ah)anthracene, fluoranthene, fluorene, indeno(123-cd)pyrene, naphthalene, phenanthrene, pyrene, total benzofluoranthenes (b+k+j).

(i) The total dichlorodiphenyldichloroethane (DDD) criterion in Table VII represents the sum of the following DDD isomers: o,p'-DDD, p,p'-DDD.

(j) The total dichlorodiphenyldichloroethylene (DDE) criterion in Table VII represents the sum of the following DDE isomers: o,p'-DDE, p,p'-DDE.

(k) The total dichlorodiphenyltrichloroethane (DDT) criterion in Table VII represents the sum of the following DDT isomers: o,p'-DDT, p,p'-DDT.

(l) The total polycyclic chlorinated biphenyl (PCB) Aroclors criterion in Table VII represents the sum of the following Aroclors: 1016, 1221, 1242, 1248, 1254, 1260, 1268.

(m) When the listed chemical criteria in Table VII have a ">" (greater than) value for the cleanup screening level, the minor adverse effects level is unknown but is above the concentration shown. If test results show concentrations above this cleanup screening level, bioassays shall be conducted to evaluate potential benthic toxicity.

(n) The department recognizes that, in the following types of freshwater sediment environments, the chemical criteria in Table VII may not be predictive of benthic toxicity:

(i) Sediment with unique geochemical characteristics such as bogs and alpine wetlands;

(ii) Sediment where chemicals not listed in Table VII are suspected of causing benthic toxicity;

(iii) Sediment, porewater, or overlying water with unusual pH, total organic carbon, alkalinity, or other characteristics; and

(iv) Sediment impacted by metals mining, metals milling, or metals smelting.

In these types of freshwater sediment environments, alternative methods for characterizing benthic toxicity shall be required, unless the department determines the chemical criteria in Table VII is predictive of benthic toxicity. In order of preference, alternative methods include:

(A) Using the biological criteria of subsection (3)(a) through (h) of this section;

(B) Establishing site-specific chemical criteria using site chemistry and the biological criteria of subsection (3)(a) through (h) of this section;

(C) Other biological methods approved by the department; or

(D) Other approaches in accordance with WAC 173-204-130.

**Table VII**  
**Freshwater Sediment Cleanup Objectives and Cleanup Screening Levels Chemical Criteria**

<b>Chemical Parameter</b>	<b>Dry Weight Normalized</b>	<b>Dry Weight Normalized</b>
	<b>Sediment Cleanup Objective</b>	<b>Cleanup Screening Level</b>
<b>Conventional chemicals (mg/kg)</b>		
Ammonia	230	300
Total sulfides	39	61
<b>Metals (mg/kg)</b>		
Arsenic	14	120
Cadmium	2.1	5.4
Chromium	72	88
Copper	400	1200
Lead	360	> 1300
Mercury	0.66	0.8
Nickel	26	110
Selenium	11	> 20
Silver	0.57	1.7
Zinc	3200	> 4200
<b>Organic chemicals (µg/kg)</b>		
4-Methylphenol	260	2000
Benzoic acid	2900	3800
Beta-Hexachlorocyclohexane	7.2	11
Bis(2-Ethylhexyl) phthalate	500	22000
Carbazole	900	1100
Dibenzofuran	200	680
Dibutyltin	910	130000
Dieldrin	4.9	9.3
Di-n-butyl phthalate	380	1000
Di-n-octyl phthalate	39	> 1100
Endrin Ketone	8.5	0
Monobutyltin	540	> 4800
Pentachlorophenol	1200	> 1200
Phenol	120	210
Tetrabutyltin	97	> 97
Total PCB Aroclors	110	2500

<b>Chemical Parameter</b>	<b>Dry Weight Normalized</b>	<b>Dry Weight Normalized</b>
	<b>Sediment Cleanup Objective</b>	<b>Cleanup Screening Level</b>
Total DDDs	310	860
Total DDEs	21	33
Total DDTs	100	8100
Total PAHs	17000	30000
Tributyltin	47	320
<b>Bulk Petroleum Hydrocarbons (mg/kg)</b>		
Total Petroleum Hydrocarbon (TPH)-Diesel	340	510
Total Petroleum Hydrocarbon (TPH)-Residual	3600	4400

(3) **Freshwater sediment - Biological criteria.** The biological effects criteria in Table VIII establish the sediment cleanup objectives and cleanup screening levels biological criteria for freshwater sediment. The criteria of this section shall apply to freshwater sediments for toxicity to the benthic invertebrate community.

(a) The sediment cleanup objective biological criteria for a sampling station is exceeded when one of the biological test results is above the sediment cleanup objective as described in Table VIII.

(b) The cleanup screening level biological criteria for a sampling station is exceeded when:

(i) Any two of the biological test results for a sampling station are above the sediment cleanup objective in Table VIII; or

(ii) One of the biological test results for a sampling station is above the cleanup screening level as described in Table VIII.

(c) The acute and chronic effects biological tests of Table IX shall be used to:

(i) Confirm designation of freshwater sediment for benthic toxicity. The department may require biological testing to confirm the designation of freshwater sediment which either passes or fails the chemical criteria in subsection (2) of this section. If required, the sediment shall be tested using the procedures in (d) of this subsection;

(ii) Evaluate the freshwater sediment cleanup objective and cleanup screening level for identifying sediment station clusters of potential concern for benthic toxicity using the procedures in WAC 173-204-510(2);

(iii) Establish the freshwater sediment cleanup objective or cleanup screening level for identifying station clusters of low concern for benthic toxicity using the procedures in WAC 173-204-510(2).

(d) To designate sediment quality using biological criteria, a minimum of the following shall be included in the suite

of biological tests for each sediment sample as described in Table IX:

- (i) Two different species;
- (ii) Three endpoints;
- (iii) One chronic test; and
- (iv) One sublethal endpoint.

(e) The appropriate control and reference sediment samples shall meet the performance standards described in Table VIII. Selection and use of reference sediment must be approved by the department and shall meet the performance standards of Table VIII. The department may approve a different performance standard based on latest scientific knowledge.

(f) When sediment is collected to conduct the biological tests in Table VIII or other biological tests approved by the department, the overlying site water shall be collected and analyzed for pH, alkalinity, hardness, and temperature.

(g) Use of alternate biological tests may be required by the department and shall be subject to the review and approval of the department using the procedures of WAC 173-204-130(4). When conditions in subsection (2)(n) of this

section apply, and when determined appropriate by the department, the use of alternate biological tests in addition to the biological tests in Table IX shall be required and be subject to the review and approval by the department using the procedures of WAC 173-204-130(4).

(h) Any person who designates test sediments using the procedures of this section shall meet the sampling and testing plan requirements of WAC 173-204-600 and records management requirements of WAC 173-204-610. Test sediments designated using the procedures of this section shall be sampled and analyzed using methods approved by the department, and shall use an appropriate quality assurance/quality control program, as determined by the department.

(4) **Freshwater sediment - Other toxic, radioactive, biological, or deleterious substances criteria.** Other toxic, radioactive, biological, or deleterious substances in, or on, sediments shall be at or below levels which cause minor adverse effects to biological resources, as determined by the department. The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet this requirement.

Biological Test/ Endpoint*	Performance Standard*		Sediment Cleanup Objective for each biological test	Cleanup Screening Level for each biological test
	Control*	Reference		
<i>Hyaella azteca</i>				
10-day mortality	$M_C < 20\%$	$M_R < 25\%$	$M_T - M_C > 15\%$	$M_T - M_C > 25\%$
28-day mortality	$M_C < 20\%$	$M_R < 30\%$	$M_T - M_C > 10\%$	$M_T - M_C > 25\%$
28-day growth	$MIG_C > 0.15$ mg/individual	$MIG_R > 0.15$ mg/individual	$MIG_T/MIG_C < 0.75$	$MIG_T/MIG_C < 0.6$
<i>Chironomus dilutus</i>				
10-day mortality	$M_C < 30\%$	$M_R < 30\%$	$M_T - M_C > 20\%$	$M_T - M_C > 30\%$
10-day growth	$MIG_C > 0.48$ mg/individual	RF/CF > 0.8	$MIG_T/MIG_C < 0.8$	$MIG_T/MIG_C < 0.7$
20-day mortality	$M_C < 32\%$	$M_R < 35\%$	$M_T - M_C > 15\%$	$M_T - M_C > 25\%$
20-day growth	$MIG_C > 0.60$ mg/individual	RF/CF > 0.8	$MIG_T/MIG_C < 0.75$	$MIG_T/MIG_C < 0.6$

**Table VIII.** Freshwater sediment cleanup objectives, cleanup screening levels, and performance standards for each biological test. M = Mortality; C = Control; R = Reference; T = Test; F = Final; MIG = Mean Individual Growth at time final; mg = milligrams. An exceedance of the sediment cleanup objective and cleanup screening level requires statistical significance at  $p = 0.05$ . Reference performance standards are provided for sites where the department has approved a freshwater reference sediment site(s) and reference results will be substituted for control in comparing test sediments to criteria. \*The department shall use the most updated American Society for Testing and Materials and EPA protocols and performance standards.

Species, biological test, and endpoint	Acute effects biological test	Chronic effects biological test	Lethal effects biological test	Sub-lethal effects biological test
Amphipod <i>Hyaella azteca</i>				
10-day Mortality	x		x	
28-day Mortality		x	x	
28-day Growth		x		x
Midge <i>Chironomus dilutus</i>				
10-day Mortality	x		x	

Species, biological test, and endpoint	Acute effects biological test	Chronic effects biological test	Lethal effects biological test	Sub-lethal effects biological test
10-day Growth	x			x
20-day Mortality		x	x	
20-day Growth		x		x

**Table IX.** Types of freshwater sediment biological tests, species, and applicable endpoints. The department shall use the most current American Society for Testing and Materials and EPA protocols for establishing appropriate biological tests.

#### NEW SECTION

**WAC 173-204-564 Sediment cleanup levels based on protection of higher trophic level species.** (1) **Applicability.** This section defines sediment cleanup objectives and cleanup screening levels for contaminants based on protection of species at trophic levels not addressed in WAC 173-204-562 and 173-204-563 (hereafter called "higher trophic level species"). They are used to establish sediment cleanup levels for sites and sediment cleanup units under WAC 173-204-560.

(2) **Requirements.** Sediment cleanup objectives and cleanup screening levels based on protection of higher trophic level species shall not be established at concentrations that do not have the potential for minor adverse effects. To establish such concentrations, a site-specific ecological risk assessment meeting the requirement of this subsection must be performed.

(a) Approval by the department. Prior to performing the assessment, the department must approve the criteria, methods, and procedures to be used in the assessment.

(b) Species evaluated. The assessment must evaluate higher trophic level species that currently utilize, may potentially inhabit, or have historically inhabited the site.

(c) Factors considered. The assessment must consider factors such as:

(i) For higher trophic level species protected under the Federal Endangered Species Act, Title 77 RCW, or Title 79 RCW, a minor adverse effect means a significant disruption of normal behavior patterns such as breeding, feeding, or sheltering. For all other higher trophic level species, minor adverse effects are effects that impair the higher trophic level species reproduction, growth or survival.

(ii) The species life history, feeding and reproductive strategy, population numbers, range, and the potential for recruitment/immigration of individuals to the site.

(iii) The potential for the contaminant to bioaccumulate or biomagnify through the food chain. A contaminant will be presumed to have this potential if any of the following conditions are met:

(A) The contaminant is listed as a persistent, bioaccumulative, or toxic (PBT) contaminant on the department's PBT list in WAC 173-333-310; or

(B) The log of the contaminant's octanol-water partitioning coefficient is greater than 3.5 ( $\log K_{ow} > 3.5$ ).

(iv) Whether contaminants are present at the site that are known or suspected to have minor adverse effects on higher trophic level species.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-570 Sediment cleanup standards—General requirements.** (1) **Applicability and purpose.** This section (~~establishes the~~) specifies the methods for establishing sediment cleanup standards (~~requirements for cleanup actions required~~) under (~~authority of~~) chapter (~~90.48 and/or~~) 70.105D RCW (~~and/or this chapter, and describes the process to determine site specific cleanup standards~~) for sites where there has been a release or threatened release of contaminants to sediment. The methods specified in this section shall not be used to establish the sediment quality standards under Part III of this chapter.

(2) **Method for establishing sediment cleanup levels.** The sediment cleanup level is the concentration or level of biological effects of a contaminant in sediment determined by the department to be protective of human health and the environment.

(a) The sediment cleanup objective shall be used to establish the sediment cleanup level.

(i) Upward adjustments. The sediment cleanup level may be adjusted upward from the sediment cleanup objective based on the following site-specific factors:

(A) Whether it is technically possible to achieve the sediment cleanup level at the applicable point of compliance within the site or sediment cleanup unit; and

(B) Whether meeting the sediment cleanup level will have an adverse impact on the aquatic environment, taking into account the long-term positive effects on natural resources and habitat restoration and enhancement and the short-term adverse impacts on natural resources and habitat caused by cleanup actions.

(ii) Limit on upward adjustments. A sediment cleanup level may not be adjusted upward above the cleanup screening level.

(b) Establishment of more stringent sediment cleanup levels. The department may establish sediment cleanup levels more stringent than those established under (a) of this subsection when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. The sediment cleanup level may not be established below the sediment cleanup objective.

(3) Sediment cleanup objectives. (The sediment cleanup objective shall be to eliminate adverse effects on biological resources and significant health threats to humans from sediment contamination. The sediment cleanup objective for all cleanup actions shall be the sediment quality standards as defined in WAC 173-204-320 through 173-204-340, as applicable. The sediment cleanup objective identifies sed-

iments that have no acute or chronic adverse effects on biological resources, and which correspond to no significant health risk to humans, as defined in this chapter.

(3) Minimum cleanup)) The sediment cleanup objective for a contaminant shall be established as the highest of the following levels:

(a) The lowest of the following risk-based levels:

(i) The concentration of the contaminant based on protection of human health as defined in WAC 173-204-561(2);

(ii) The concentration or level of biological effects of the contaminant based on benthic toxicity as defined in WAC 173-204-562 and 173-204-563, as applicable;

(iii) Concentration or level of biological effects of the contaminant not estimated to result in minor adverse effects to higher trophic level species as defined in WAC 173-204-564;

(iv) Requirements in other applicable, federal, state, and local laws;

(b) Natural background; and

(c) Practical quantitation limit.

(4) Cleanup screening level. The ~~((minimum cleanup level is the maximum allowed chemical concentration and level of biological effects permissible at the cleanup site to be achieved by year ten after completion of the active cleanup action.~~

~~(a) The minimum cleanup levels criteria of WAC 173-204-520 shall be used in evaluation of cleanup alternatives per the procedures of WAC 173-204-560, and selection of a site cleanup standard(s) per the procedures of this section.~~

~~(b) The Puget Sound marine sediment minimum cleanup level is established by the following:~~

~~(i) Sediments with chemical concentrations at or below the chemical criteria of Table III shall be determined to meet the minimum cleanup level, except as provided in (b)(iv) of this subsection; and~~

~~(ii) Sediments with chemical concentrations that are higher than the chemical criteria of Table III shall be determined to exceed the minimum cleanup level, except as provided in (b)(iii) of this subsection; and~~

~~(iii) Sediments with biological effects that do not exceed the levels of WAC 173-204-520(3) shall be determined to meet the minimum cleanup level; and~~

~~(iv) Sediments with biological effects that exceed the levels of WAC 173-204-520(3) shall be determined to exceed the minimum cleanup level; and~~

~~(v) Sediments which exceed the sediment minimum cleanup level human health criteria or the other toxic, radioactive, biological, or deleterious substances criteria or the nonanthropogenically affected criteria of WAC 173-204-520 as determined by the department, shall be determined to exceed the minimum cleanup level.~~

(4) Sediment cleanup standard. The sediment cleanup standards are established on a site-specific basis within an allowable range of contamination. The lower end of the range is the sediment cleanup objective as defined in subsection (2) of this section. The upper end of the range is the minimum cleanup level as defined in subsection (3) of this section. The site-specific cleanup standards shall be as close as practicable to the cleanup objective but in no case shall exceed the minimum cleanup level. For any given cleanup action, either a

site-specific sediment cleanup standard shall be defined, or multiple site-unit sediment cleanup standards shall be defined. In all cases, the cleanup standards shall be defined in consideration of the net environmental effects (including the potential for natural recovery of the sediments over time), cost and engineering feasibility of different cleanup alternatives, as determined through the cleanup study plan and report standards of WAC 173-204-560.

(5) All cleanup standards must ensure protection of human health and the environment, and must meet all legally applicable federal, state, and local requirements.)) cleanup screening level for a contaminant shall be established as the highest of the following levels:

(a) The lowest of the following risk-based levels:

(i) The concentration of the contaminant based on protection of human health as defined in WAC 173-204-561(3);

(ii) The concentration or level of biological effects of the contaminant based on benthic toxicity as defined in WAC 173-204-562 through 173-204-563, as applicable;

(iii) The concentration or level of biological effects of the contaminant that are not estimated to result in minor adverse effects to higher trophic level species as defined in WAC 173-204-564;

(iv) Requirements in other applicable federal, state and local laws;

(b) Regional background as defined in subsection (5) of this section; and

(c) Practical quantitation limit.

(5) Regional background. Regional background is the concentration of a contaminant within a department-defined geographic area that is primarily attributable to atmospheric deposition or diffuse nonpoint sources not attributable to any source. Regional background for a contaminant shall be established by the department in accordance with the requirements of this subsection.

(a) In an area with no established regional background, a person is required to provide samples or demonstrate that sufficient data exists. The department will determine if the data is sufficient to establish a regional background.

(b) Sampling of contaminants within a department-defined geographic area may be conducted to establish a regional background. Calculation of regional background for a contaminant must exclude samples from areas with an elevated level of contamination due to the direct impact of known or suspected contaminant sources, including areas within a sediment cleanup unit or depositional zone of a discharge.

(c) The department will determine the appropriate statistical analyses, number and type of samples, and analytical methods to establish a regional background on a case-by-case basis.

(d) If a water body is not beyond the direct influence of a significant contaminant source, the department may use alternative geographic approaches to determine regional background for a contaminant. Several factors must be evaluated when determining an alternate geographic approach including:

(i) Proximity of sampling locations to the site;

(ii) Similar geologic origins as the site sediment;

(iii) Similar fate and transport and biological activities as the site; and

(iv) Chemical similarity with the site.

**(6) Compliance monitoring.**

(a) **General.** The methods used to determine compliance with sediment cleanup standards shall be determined by the department on a site-specific basis.

(b) **Use of tissue analysis.** At the department's discretion, and when determined to provide appropriate protection for human health or the environment, contaminants in tissue may be used to identify and screen chemicals of concern in sediment during the remedial investigation/feasibility study and to evaluate compliance with sediment cleanup standards.

(i) **Risk assessment requirements.** Assessments of risk to human health or the environment from tissue chemical concentrations must be consistent with the procedures of WAC 173-204-560, 173-204-561 and 173-204-564.

(ii) **Species and tissue type selection.** The methods and procedures used to select the appropriate species and tissue types shall be determined by the department on a site-specific basis.

(7) **Data reporting.** Any person(s) who samples sediment and/or tissue to assess compliance with Part V of this chapter shall comply with the following conditions:

(a) Where analytical results indicate a chemical is not detected in a sample, the data shall be reported as "non detect" at the method detection limit and the method detection limit reported.

(b) Where analytical results indicate a chemical is detected between the method detection limit and the practical quantitation limit in a sample, the data shall be reported and qualified as "estimated."

**NEW SECTION**

**WAC 173-204-575 Cleanup action decisions.** (1) **Purpose.** The department shall use the remedial investigation/feasibility study report and other appropriate information to establish sediment cleanup standards and select cleanup actions for a site or sediment cleanup unit. These decisions must be consistent with this chapter and the underlying administrative authority.

(2) **State cleanup sites.** For sites or sediment cleanup units being cleaned up under the authority of chapter 70.105D RCW, the department shall prepare a cleanup action plan documenting its cleanup decisions. The cleanup action plan shall be prepared consistent with the pertinent requirements and procedures specified in WAC 173-340-380. The decisions in the cleanup action plan shall be incorporated into any enforcement order, agreed order, consent decree, or other binding legal document issued under chapter 70.105D RCW. The public review process for the department's decisions shall comply with the requirements and procedures in chapter 173-340 WAC.

(3) **Federal cleanup sites.** For sites or sediment cleanup units being cleaned up under the authority of the federal Comprehensive Environmental Response, Compensation and Liability Act; (42 U.S.C. §§ 9601 et seq.), a record of decision, administrative order, consent decree, or other binding legal document issued under the federal cleanup law may be

used by the department to meet the requirements of this section provided:

(a) The cleanup action is consistent with the requirements in this chapter;

(b) The state has concurred with the cleanup action; and

(c) An opportunity was provided for the public to comment on the cleanup action.

(4) **Other authorities.** For sites or sediment cleanup units being cleaned up under other authorities, the department's cleanup decisions shall be incorporated into the permit, administrative order, or other appropriate binding legal document. The public review process, and documentation for the department's decisions, shall be consistent with the requirements and procedures for the underlying administrative authority.

(5) **Public involvement.** The department shall provide public notice and an opportunity for review and comment on its sediment cleanup decisions under this chapter.

(a) Where the underlying administrative authority used to implement the cleanup action provides an adequate public notice and comment opportunity prior to implementation of the cleanup action, separate public notice and comment is not required under this chapter.

(b) If the underlying administrative authority does not provide adequate public notice and comment opportunity, then the department shall provide for this prior to implementation of the cleanup action.

(c) Where more than one public notice and comment period is needed to fulfill the requirements of this chapter and those in other laws, the department may combine public notice and comment periods, hearings, and other public involvement opportunities to streamline the public review process.

**AMENDATORY SECTION** (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

**WAC 173-204-580 Selection of cleanup actions ((decision)).** ~~((1) Each person performing a cleanup action to meet the intent of this chapter shall comply with the standards of WAC 173-204-560(7), Cleanup study report. Except for cleanups conducted under chapter 70.105D RCW, the department shall review each cleanup study report and issue a written approval of one or more of the cleanup action alternatives described in the cleanup study report, or issue a written disapproval of all alternatives described in the cleanup study report. The department's approval of one or more cleanup study report cleanup action alternatives shall constitute the cleanup decision and shall be referenced in one or more permit or administrative authorities established under chapter 90.48 or 70.105D RCW, Section 401 of the federal Clean Water Act, chapter 173-225 WAC, establishment of implementation procedures of application for certification, or other administrative authorities available to the department. The department may approve the cleanup alternative recommended in the cleanup study report, may approve a different alternative discussed in the report, or may approve an alternative(s) with appropriate conditions. The department's disapproval of all cleanup study report cleanup action alternatives shall be issued by certified mail, return receipt requested, to~~

the cleanup action proponent(s). The procedures for department review of the cleanup study report and selection of a cleanup action under chapter 70.105D RCW shall be in accordance with the procedures of chapter 173-340 WAC.

(2) All cleanup actions conducted under this chapter shall meet the following requirements:

(a) Receive department review and written approval of the preferred and/or alternate cleanup actions and necessary sediment recovery zones proposed in the cleanup study report prior to implementing a cleanup action(s);

(b) Achieve a degree of cleanup that is protective of human health and the environment;

(c) Achieve compliance with applicable state, federal, and local laws;

(d) Achieve compliance with site cleanup standards;

(e) Achieve compliance with sediment source control requirements pursuant to WAC 173-204-400 through 173-204-420, if necessary;

(f) Provide for landowner review of the cleanup study plan and report, and consider public concerns raised during review of the draft cleanup report; and

(g) Provide adequate monitoring to ensure the effectiveness of the cleanup action.

(3) Cleanup time frame.

(a) The cleanup action selected shall provide for a reasonable time frame for completion of the cleanup action, based on consideration of the following factors:

(i) Potential risks posed by the site to biological resources and human health;

(ii) Practicability of achieving the site cleanup standards in less than a ten-year period;

(iii) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by the site contamination;

(iv) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by the site contamination;

(v) Likely effectiveness and reliability of institutional controls;

(vi) Degree of, and ability to control and monitor, migration of contamination from the site; and

(vii) Natural recovery processes which are expected to occur at the site that will reduce concentrations of contaminants.

(b) The department may authorize cleanup time frames that exceed the ten-year period used in deriving the site cleanup standards of WAC 173-204-570(4) where cleanup actions are not practicable to accomplish within a ten-year period.

(4) In evaluating cleanup action alternatives, the department shall consider:

(a) The net environmental effects of the alternatives, including consideration of residual effects, recovery rates, and any adverse effects of cleanup construction or disposal activities;

(b) The relative cost effectiveness of the alternatives in achieving the approved site cleanup standards; and

(c) The technical effectiveness and reliability of the alternatives.

(5) Public participation. The department shall provide opportunity for public review and comment on all cleanup action study plans, reports, and decisions reviewed and approved by the department, for cleanup actions conducted under this chapter.

(6) Land access. In cases where the person(s) responsible for cleanup is not able to secure access to lands subject to a cleanup action decision made pursuant to this section, the department may facilitate negotiations or other proceedings to secure access to the lands. Requests for department facilitation of land access shall be submitted to the department in writing by the person(s) named in the cleanup action approval.) (1) **Purpose.** This section establishes the minimum requirements and criteria for selecting sediment cleanup actions under chapter 70.105D RCW. This section applies both to sediment-only cleanup sites and to the sediment portion of any combined upland and sediment cleanup site.

(2) **General requirements.** The department shall review and provide written approval of cleanup actions and sediment recovery zones prior to implementation of a cleanup action.

(3) **Minimum requirements for sediment cleanup actions.** The requirements in this subsection and the requirements for establishing the sediment cleanup standard under WAC 173-204-560 shall be considered concurrently. All sediment cleanup actions conducted under this chapter shall meet the following minimum requirements:

(a) Protect human health and the environment;

(b) Comply with all applicable state, federal, and local laws;

(c) Comply with the sediment cleanup standards specified in WAC 173-204-560 through 173-204-564;

(d) Use permanent solutions to the maximum extent practicable, as defined in subsection (4) of this section;

(e) Provide for a reasonable restoration time frame as defined in subsection (5) of this section. Preference shall be given to alternatives that restore the site sooner. Unless otherwise determined by the department, cleanup actions that achieve compliance with the sediment cleanup standards at a site or sediment cleanup unit within ten years from the start of the cleanup action shall be presumed to have a reasonable restoration time frame.

(f) Where source control measures are proposed as part of a cleanup action, preference shall be given to alternatives with source control measures that are more effective in minimizing the accumulation of contaminants in sediment due to current and future discharges;

(g) If a sediment recovery zone is part of the cleanup action, meet the requirements in WAC 173-204-590;

(h) Cleanup actions shall not rely primarily on monitored natural recovery or institutional controls and monitoring where it is technically possible to implement a more permanent cleanup action. Where institutional controls are used, they must comply with WAC 173-340-440 and preference shall be given to the types of institutional controls with a demonstrated ability to control exposures and ensure the integrity of the cleanup action;

(i) Provide an opportunity for review and comment by affected landowners and the general public, and consider concerns identified in these comments; and

(j) Provide adequate monitoring to ensure the effectiveness of the cleanup action. Preference will be given to alternatives with a greater ability to monitor the effectiveness of the cleanup action, institutional controls, and any migration of residual contamination; and

(k) Provide for periodic review to determine the long-term effectiveness and protectiveness of remedies that utilize containment, enhanced natural recovery, monitored natural recovery, institutional controls or a sediment recovery zone. The periodic review shall follow the process and requirements specified in WAC 173-340-420.

(4) **Using permanent solutions to the maximum extent practicable.** This subsection describes the requirements for determining whether a cleanup action consists of permanent solutions to the maximum extent practicable, as required under subsection (3)(d) of this section. When making this determination, the process and criteria in WAC 173-340-360 shall be used. However, when assessing the relative degree of long-term effectiveness of cleanup action alternatives, the following hierarchy, in descending order, shall be used as a guide in place of the hierarchy in WAC 173-340-360:

(a) Source controls in combination with other cleanup technologies;

(b) Dredging and beneficial reuse of the sediments;

(c) Dredging and treatment to immobilize, destroy, or detoxify contaminants;

(d) In-situ treatment to immobilize, destroy, or detoxify contaminants;

(e) Dredging and disposal in an upland engineered facility that minimizes subsequent releases and exposures to contaminants;

(f) Dredging and disposal in a nearshore, in-water, confined aquatic disposal facility;

(g) Containment of contaminated sediments in-place with an engineered cap;

(h) Dredging and disposal at an open water disposal site approved by the department;

(i) Enhanced natural recovery;

(j) Monitored natural recovery; and

(k) Institutional controls and monitoring.

(5) **Providing a reasonable restoration time frame.** This subsection describes the requirements and procedures for determining whether a cleanup action provides a reasonable restoration time frame, as required under subsection (3)(e) of this section.

(a) **Factors.** When determining whether a cleanup action provides a reasonable restoration time frame, the following factors shall be considered:

(i) Potential risks posed by the site or sediment cleanup unit to biological resources and human health;

(ii) Practicability of achieving the site or sediment cleanup unit-specific cleanup standards in less than a ten-year period;

(iii) Current use of the site or sediment cleanup unit, surrounding areas, and associated resources that are, or may be, affected by residual contamination;

(iv) Potential future use of the site or sediment cleanup unit, surrounding areas, and associated resources that are, or may be, affected by residual contamination;

(v) Likely effectiveness and reliability of institutional controls;

(vi) Degree of, and ability to control and monitor migration of residual contamination; and

(vii) The degree to which natural recovery processes are expected to reduce contamination.

(b) **Time frames longer than ten years.** The department must authorize any restoration time frame longer than ten years after the start of the cleanup action. To be authorized, the proponent must demonstrate that cleanup actions cannot practicably achieve sediment cleanup standards at the site or sediment cleanup unit within ten years after the start of the cleanup action. If the department approves a longer restoration time frame, the department must also establish a sediment recovery zone in accordance with WAC 173-204-590.

AMENDATORY SECTION (Amending WSR 96-02-058, filed 12/29/95, effective 1/29/96)

**WAC 173-204-590 Sediment recovery zones. (1) Applicability.** ((The purpose of this section is to set forth the requirements for establishment and monitoring of sediment recovery zones to meet the intent of sediment quality dilution zones authorized pursuant to RCW 90.48.520.

The standards of this section are applicable to cleanup action decisions made pursuant to WAC 173-204-580 where selected actions leave in place marine, low salinity, or fresh-water sediments that exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.)) This section specifies requirements governing the establishment and monitoring of sediment recovery zones. Sediment recovery zones are necessary at sites and sediment cleanup units where the department has determined the selected cleanup actions cannot practicably achieve sediment cleanup standards within a ten year restoration time frame from the start of the cleanup action.

(2) **General requirements.** Authorization of a sediment recovery zone by the department shall require compliance with the following general requirements:

(a) ((The sediment recovery zone shall be determined by application of the department's sediment recovery zone computer models "CORMIX," "PLUMES," and/or "WASP," or an alternate sediment recovery zone model(s) approved by the department under WAC 173-204-130(4) as limited by the standards of this section and the department's best professional judgment.

(b)) Establishment or expansion of a sediment recovery zone shall not be used as a substitute for active cleanup actions, when such actions are determined to be practicable under WAC 173-204-570;

(b) The areal extent of the sediment recovery zone shall not extend beyond the area within the site or sediment cleanup unit where the department has determined the cleanup action cannot practicably achieve sediment cleanup standards within a ten year restoration time frame from the start of the cleanup action;

(c) The chemical concentrations within the sediment recovery zone shall be as close to the sediment cleanup standard as practicable;

(d) Best management practices shall be used for activities resulting in diffuse, nonpoint discharges within the sediment recovery zone;

(e) The department shall ~~((provide specific authorization for a))~~ describe the sediment recovery zone ~~((within the written approval of the cleanup study report and cleanup decision required))~~ in the cleanup action plan, or other decision document prepared under WAC 173-204-580.

~~((e))~~ The time period during which a sediment recovery zone is authorized by the department shall be so stated in the department's written approval of the cleanup study report and cleanup decision.

~~(d)~~ The department's written sediment recovery zone) Specific authorization for the sediment recovery zone must be provided in an enforceable document (permits, orders, settlements, etc.); and

(f) Any authorization for a sediment recovery zone shall identify the legal location and landowners of property proposed as a sediment recovery zone.

~~((e))~~ Operational terms and conditions for the authorized sediment recovery zone pursuant to subsection (5) of this section shall be maintained at all times.

~~(f)~~ Where cleanup is not practicable pursuant to the analysis under WAC 173-204-570(4),) (3) **Criteria.** When considering whether to authorize a sediment recovery zone, the department shall consider the criteria in subsection (2) of this section and the following factors:

(a) Limitation of any modeling used to project the areal extent and time period needed for the sediment recovery zone;

(b) Potential risks posed by the sediment recovery zone to human health and the environment;

(c) The technical practicability of elimination or reduction of the size and/or degree of chemical contamination and/or level of biological effects within the proposed sediment recovery zone;

(d) Current and potential use of the sediment recovery zone, surrounding areas, and associate resources that are, or may be, affected by releases from the zone; and

(e) The need for institutional controls or other site use restrictions to reduce site contamination risks to human health.

(4) **Duration.** Sediment recovery zones may be authorized for ~~((periods in excess))~~ an initial duration of up to ten years and subsequently reviewed and extended in increments not to exceed ten years.

~~((3))~~ (a) The areal extent and time period during which a sediment recovery zone is projected to be necessary will be based on the source loading rate and the recovery rate. The source loading rate and recovery rate shall be determined by application of the department's models "CORMIX," "PLUMES," and/or "WASP," or an alternate method approved by the department under WAC 173-204-130(4), as limited by the requirements of this section and the department's best professional judgment.

(b) The time period during which a sediment recovery zone is authorized by the department shall be stated in the

cleanup action plan, or other decision document prepared under WAC 173-204-580, and implementing documents.

(5) **Operational terms and conditions.** Operational terms and conditions for the authorized sediment recovery zone shall be maintained at all times. These terms and conditions may include:

(a) Chemical, bioassay, or tissue monitoring of discharges, receiving water column, organisms, and sediment;

(b) Confirmation of sediment source(s) loading rates, chemical quality and biological toxicity;

(c) Monitoring contaminant bioaccumulation; and

(d) Ongoing evaluation of the water quality, sediment quality, biological conditions, and human health impacts within and adjacent to the proposed or authorized sediment recovery zone.

(6) **Trespass not authorized.** A sediment recovery zone authorization issued by the department under the authority of chapter ~~((90-48-07))~~ 70.105D RCW, or other administrative means available to the department, does not constitute authorization to trespass on lands not owned by the applicant. These requirements do not address, and in no way alter, the legal rights, responsibilities, or liabilities of the permittee or landowner of the sediment recovery zone for any applicable requirements of proprietary, real estate, tort, and/or other laws not directly expressed as a requirement of this chapter.

~~((4))~~ (7) **Public involvement.** Prior to authorization, the department shall make a reasonable effort to identify and notify all landowners affected by the proposed sediment recovery zone. The department shall issue a sediment recovery zone notification letter to any person it believes to be a potentially affected landowner, the Washington state department of natural resources, the U.S. Army Corps of Engineers, affected port districts, local governments with land use planning authority for the area, and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide:

(a) The name of the person the department believes to be the affected landowner; ~~((and))~~

(b) The names of other affected landowners to whom the department has sent a proposed sediment recovery zone notification letter; ~~((and))~~

(c) The name of the sediment recovery zone applicant; ~~((and))~~

(d) A general description of the proposed sediment recovery zone, including the chemical(s) of concern by name and concentration, and the area of affected sediment; ~~((and))~~

(e) The determination of the department concerning whether the proposed sediment recovery zone application meets the ~~((standards))~~ requirements of this section; ~~((and))~~

(f) The intention of the department whether to authorize the proposed sediment recovery zone; and

~~((g))~~ ~~((Notification that the affected landowner may))~~ Invite comments on the proposed sediment recovery zone. Any landowner comments shall be submitted in writing to the department within thirty days from the date of receipt of the notification letter, unless the department provides an extension.

~~((5))~~ As determined necessary by the department, operational terms and conditions for the sediment recovery zone

~~may include completion and submittal to the department of discharge effluent and/or receiving water column and/or sediment chemical monitoring studies and/or bioassays to evaluate ongoing water quality, sediment quality, and biological conditions within and adjacent to the proposed or authorized sediment recovery zone.~~

~~(6))~~ **(8) Enforcement.** The department shall review all data or studies conducted ~~((in accordance with))~~ under a sediment recovery zone authorization to ensure compliance with the terms and conditions of the authorization and the ~~((standards))~~ **requirements** of this section. Whenever, in the opinion of the department, the operational terms and conditions of a sediment recovery zone or the ~~((standards))~~ **requirements** of this section are violated or there is a potential to violate the sediment recovery zone authorization or the ~~((standards))~~ **requirements** of this section, or new information or a reexamination of existing information indicates the sediment recovery zone is no longer appropriate, the department may at its discretion:

- (a) Require additional chemical or biological monitoring as necessary;
- (b) Revise the sediment recovery zone authorization as necessary to meet the ~~((standards))~~ **requirements** of this section;
- (c) Require active contaminated sediment maintenance actions, including additional cleanup in accordance with the standards of WAC 173-204-500 through 173-204-580; and/or
- (d) Withdraw the department's authorization of the sediment recovery zone.

**NEW SECTION**

The following section of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
173-204-520	173-204-562
173-204-530	173-204-520
173-204-540	173-204-530
173-204-550	173-204-540
173-204-560	173-204-550
173-204-570	173-204-560
173-204-580	173-204-570

**WSR 12-17-086  
PROPOSED RULES  
LIQUOR CONTROL BOARD**

[Filed August 15, 2012, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-12-012.

Title of Rule and Other Identifying Information: WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders.

Hearing Location(s): Washington State Liquor Control Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on September 26, 2010 [2012], at 10:00 a.m.

Date of Intended Adoption: October 3, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689.

Assistance for Persons with Disabilities: Contact Karen McCall, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new laws created with the passing of Initiative 1183 require clarification on the \$150 million assessment due to the WSLCB by persons holding a spirits distributor license between March 1, 2012, and March 31, 2013.

Statutory Authority for Adoption: RCW 66.24.055, 66.08.030.

Statute Being Implemented: RCW 66.24.055.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [WSLCB], governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is to clarify RCW 66.24.055.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required.

August 15, 2012

Sharon Foster

Chairman

**NEW SECTION**

**WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders.** (1) RCW 66.24.055 requires that all persons holding a spirits distributor license on or before March 31, 2013, must have collectively paid a total of one hundred fifty million dollars in spirits distributor license fees by March 31, 2013. If the spirits distributor license fees collected by March 31, 2013, total less than one hundred fifty million dollars, the board is required to assess those persons holding a spirits distributor license on or before March 31, 2013, in order to collect a total of one hundred fifty million dollars. The board will calculate the additional amount owed by each spirits distributor licensee as follows:

(a) The amount of additional fees owed will be calculated using the total spirits sales made by each spirits distributor licensee during calendar year 2012. If a spirits distributor licensee had no spirits sales during calendar year 2012, no additional fees will be due;

(b) Each licensee will be assessed and required to pay their proportionate share of the remaining liability between

one hundred fifty million dollars and actual collections. The proportionate share of fees due will be calculated by dividing the total dollar amount of sales made by each spirits distributor licensee by the total spirits sales made by all spirits distributor licensees combined. If the total amount of payments exceeds one hundred fifty million dollars, each licensee will be credited a proportionate amount of the overpayment to their future license issuance fee obligations.

(2) The board will notify all spirits distributor licensees no later than April 30, 2013, of the amount they are required to pay in additional license fees. Spirits distributor licensees must pay the additional license fees to the board by May 31, 2013.

(3) The board may suspend or revoke any spirits distributor license if the required additional license fees are not paid by May 31, 2013. If suspended, the suspension will remain in effect until the additional license fees are paid.

(4) The board may also initiate collection proceedings for any amount of additional fees not paid to the board by May 31, 2013.

**WSR 12-17-092**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed August 16, 2012, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-13-099.

Title of Rule and Other Identifying Information: Amending WAC 230-15-135 Wagering limits for nonhouse-banked card games; and repealing WAC 230-15-189 House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker.

Hearing Location(s): Clarion, 1507 North First Street, Yakima, WA 98901, on October 11 or 12, 2012, at 9:00 a.m. or 1:00 p.m.

NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: October 11 or 12, 2012.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [SusanA@wsgc.wa.gov](mailto:SusanA@wsgc.wa.gov), fax (360) 486-3625, by October 1, 2012.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by October 1, 2012, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We have received a petition for rule change from the Recreational Gaming Association requesting that Texas Hold'em wager limits be permanently increased from \$40 to \$100. And, for house-keeping purposes, a repealer of WAC 230-15-189, as the Texas Hold'em wager increase pilot program expires December 31, 2012.

This proposal comes after an eighteen month pilot program which increased wager limits from \$40 to \$100 for Texas Hold'em poker. The pilot program began October

2010 and ended May 2012; however, the higher limits are in place until December 31, 2012, or until the commission takes action. The pilot program was recommended by the "Texas Hold'em Workgroup." This workgroup was created in 2009 by the gambling commissioners after receiving three petitions from the public, in five years, to increase poker wager limits. The workgroup included staff and stakeholders. Commissioner Ellis chaired the workgroup. The group discussed various aspects of Texas Hold'em poker and the possible impacts, effects, and desired results of any potential wager increase.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Dolores Chiechi, representing the Recreational Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensees because licensees are not required to offer higher wager limits.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 16, 2012

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 658, filed 10/9/09, effective 11/9/09)

**WAC 230-15-135 Wagering limits for nonhouse-banked card games.** Card room licensees must not exceed these wagering limits:

(1) **Poker** -

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed forty dollars; however, class F and house-banked card game licensees may offer a single wager not to exceed one hundred dollars for the game of Texas Hold'em.

(2) **Games based on achieving a specific number of points** - Each point must not exceed five cents in value;

(3) **Ante** - No more than the maximum wager allowed for the first betting round for any game, except for Panguing (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan)** - The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-15-189	House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker.
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#### **WSR 12-17-110**

##### **PROPOSED RULES**

#### **DEPARTMENT OF ECOLOGY**

[Order 11-03—Filed August 20, 2012, 11:57 a.m.]

Continuance of WSR 12-12-063.

Preproposal statement of inquiry was filed as WSR 11-10-089.

Title of Rule and Other Identifying Information: Chapter 173-165 WAC, Certified water right examiners, the rule will implement RCW 90.03.665 to create the certified water right examiner program.

Hearing Location(s): Ecology's Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, on September 25, 2012, at 4:00 p.m.

Date of Intended Adoption: October 10, 2012.

Submit Written Comments to: Rebecca Inman, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [Rebecca.Inman@ecy.wa.gov](mailto:Rebecca.Inman@ecy.wa.gov), fax (360) 407-6574, by October 2, 2012.

Assistance for Persons with Disabilities: Contact Judy Beitel at (360) 6878 [(360) 407-6878] by September 18, 2012, TTY 771 or 1-877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To announce an additional public hearing and extend the public comment period.

Reasons Supporting Proposal: The address cited in the original CR-102 and public notices for the hearing at ecology's northwest regional office was incorrect. To assure everyone the opportunity to attend the hearing and give testimony, we are holding a second hearing at the same location and extending the comment period.

Statutory Authority for Adoption: RCW 90.03.665(11), 43.27A.090(11), 43.21A.064(9).

Statute Being Implemented: RCW 90.03.665.

Rule is not necessitated by federal law, federal or state court decision.

August 15, 2012

Polly Zehm

Deputy Director

#### **WSR 12-17-118**

##### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **LABOR AND INDUSTRIES**

[Filed August 21, 2012, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-085.

Title of Rule and Other Identifying Information: Chapter 296-155 WAC, Safety standards for construction work, including Part C-1, fall restraint and fall arrest, and Part K, floor openings, wall openings and stairways (also updating references throughout this chapter); chapter 296-36 WAC, Safety standards—Compressed air work; chapter 296-45 WAC, Safety standards for electrical workers; and chapter 296-874 WAC, Scaffolds.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on October 16, 2012, at 9:00 a.m.; and at the Double Tree by Hilton, 322 North Spokane Falls Court, Spokane, WA 99201, on October 17, 2012, at 9:00 a.m.

Date of Intended Adoption: January 22, 2013.

Submit Written Comments to: Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, e-mail [cynthia.ireland@lni.wa.gov](mailto:cynthia.ireland@lni.wa.gov), fax (360) 902-5619, by 5 p.m. October 24, 2012.

Assistance for Persons with Disabilities: Contact Beverly Clark by 5:00 p.m. October 1, 2012, (360) 902-5516 or [beverly.clark@lni.wa.gov](mailto:beverly.clark@lni.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2007, the division of occupational safety and health (DOSH) began working with a fall protection stakeholder group to consolidate the fall protection requirements located in chapter 296-155 WAC, Safety standards for construction work, into one coherent set of requirements. DOSH is proposing to merge Parts C-1 and K, creating one location where fall protection requirements would be located for construction. In addition, we asked the stakeholder group to help identify any technical changes needed due to industry developments and to ensure that any gap in current fall protection requirements would be addressed and rectified by this proposed rule update. Throughout the process, clear and concise language in the proposal was a focal point.

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-18 issue of the Register.

Reasons Supporting Proposal: This proposal was developed with the assistance of a stakeholder group from the industry representing business and labor.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. 1926, Subpart M.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Leland, Tumwater, Washington, (360) 902-4504; Implementation and Enforcement: Anne F. Soiza, Tumwater, Washington, (360) 902-5090.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-18 issue of the Register.

A copy of the statement may be obtained by contacting Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

August 21, 2012

Judy Schurke

Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-18 issue of the Register.

**WSR 12-17-119**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 21, 2012, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-082.

Title of Rule and Other Identifying Information: Chapter 296-305 WAC, Safety standards for firefighters.

Hearing Location(s): Double Tree Hotel, 322 North Spokane Falls Court, Salon 1, Spokane, WA 99201, on September 25, 2012, at 9:00 a.m.; and at the Tumwater Department of Labor and Industries, 7273 Linderson Way S.W., Room S117/S118, Tumwater, WA 98501, on October 2, 2012, at 9:00 a.m.

Date of Intended Adoption: January 22, 2013.

Submit Written Comments to: Devin Proctor, P.O. Box 44620, Olympia, WA 98504-4620, e-mail devin.proctor@lni.wa.gov, fax (360) 902-5619, by 5:00 p.m. October 12, 2012.

Assistance for Persons with Disabilities: Contact Beverly Clark by 5:00 p.m., September 20, 2012, (360) 902-5516 or beverly.clark@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Federal Occupational Safety and Health Administration (OSHA) advised the department of a couple of areas in the firefighters standard where we are not-as-effective-as the federal rules. Stakeholders asked us to look at our firefighter standards and bring them up-to-date with current consensus standards and practices.

#### NEW SECTIONS:

#### **WAC 296-305-02002 Structural firefighting clothing (SFF).**

- Existing personal protection equipment (PPE) sections were combined and updated to be in line with the National Fire Protection Association (NFPA) format and references.

#### **WAC 296-305-02004 Protection ensemble for structural firefighting.**

- Existing PPE sections were combined and updated to be in line with the NFPA format and references.

#### **WAC 296-305-02012 Body armor.**

- This section was rewritten to be more specific about determining when and how body armor should be used along with being updated to current National Institute of Justice standards for vests.

#### **WAC 296-305-03002 Hazardous materials.**

- Requirements were rewritten to remove pieces that duplicated the emergency response standard, and reordered to read more easily. Additionally, terminology was updated to match the NFPA.

#### **WAC 296-305-04510 Aerial apparatus.**

- WAC 296-305-04509 Aerial ladders, and 296-305-04511 Elevated platforms, were combined, updated, and formatted to be consistent with the NFPA.

#### **WAC 296-305-05000 Incident management.**

- Our rule currently applies only to a structural fireground, not hazmat, vehicle emergencies, wildfires, drills, etc. Requirements were added to apply to these situations. Additionally, we added requirements to bring our rule into compliance with the presidential declaration creating the National Incident Management System. We also added language about different zones and addressed firefighters being struck by vehicles at the scene of incidents.

#### **WAC 296-305-05002 Fire suppression.**

- This section contains parts of WAC 296-305-05001 Emergency fireground operations—Structural, which is being repealed. We removed "structural" from the rule, and made it apply to general suppression. This is also the section that addresses the 2-in/2-out issue. We will no longer allow both standby firefighters to have other duties in addition to standing by. We further clarified that the standby firefighter cannot be doing something critical to the safety of the firefighters on the scene. Additionally, we cleared up language about what types of communication can be used, and now require the use of self

contained breathing apparatus throughout the overhaul phase of fire fighting.

**WAC 296-305-05004 Occupational exposure to heat and cold stress.**

- Requirements were added to combine L&I's requirements for WAC 296-62-095 Outdoor heat exposure, with the NFPA on rehabilitation.

**WAC 296-305-05101 Technical rescue general requirements.**

**WAC 296-305-05103 Technical rescue training.**

**WAC 296-305-05105 Technical rescue standard operating procedures.**

**WAC 296-305-05107 Technical rescue incident response planning.**

**WAC 296-305-05109 Technical rescue equipment.**

**WAC 296-305-05111 Technical rescue safety.**

**WAC 296-305-05113 Technical rescue operational specialties.**

- These sections have been rewritten to bring our technical rescue pieces into one section and more in line with the NFPA, which is the industry standard. We added subjects that had not been previously addressed, such as swift water, tunnel, and mine rescue, along with updating the rope rescue section. We also made it clear that the specialty requirements apply only to those departments who chose to do this work.

**WAC 296-305-05502 Training and member development.**

- Combined training requirements from WAC 296-305-05501 Fire training and 296-305-05503 Summary of training requirements. We added a section covering the use of structures for training other than live fires, such as destruction or dealing with asbestos. We also made the training language clear and put the information contained in WAC 296-305-05503 into a table.

**WAC 296-305-06006 Ground ladders.**

- Rewrote requirements from the current section to come into compliance with NFPA standards.

**WAC 296-305-06008 Electrical.**

- Rewrote the electrical section to apply to all electrical equipment and to come into compliance with other L&I electrical requirements.

**WAC 296-305-07002 Wildland fire personnel accountability.**

**WAC 296-305-07004 Heat-related illness prevention for wildfire firefighters.**

**WAC 296-305-07006 Equipment for wildland firefighting.**

**WAC 296-305-07008 Aircraft operations for fighting wildland fires.**

**WAC 296-305-07010 Training for wildland firefighting.**

**WAC 296-305-07012 Personal protective clothing and equipment for wildland firefighting.**

**WAC 296-305-07014 Apparatus standards for wildland firefighting.**

**WAC 296-305-07016 Falling and equipment in forest lands.**

**WAC 296-305-07018 Occupant restraints and enclosures for wildland firefighting.**

- The above sections were clarified, updated, and reordered from the previous wildland firefighting section, with new requirements for working in forested areas added.

**AMENDED SECTIONS:**

**In addition to housekeeping corrections throughout the rule, the following amendments were made:**

**WAC 296-305-01003 Scope and application.**

- Deleted language "the provisions of this standard do not apply to industrial fire brigades, as defined in this chapter."

**WAC 296-305-01005 Definitions.**

- Definitions have been updated to fit the terminology used in the firefighting standard. Added several definitions to clarify the rules and amended others to be consistent with other L&I standards.

**WAC 296-305-01007 Variance and procedure.**

- Deleted the references to RCW 49.17.080 and 49.17.090.

**WAC 296-305-01501 Injury and illness reports for firefighters.**

- Housekeeping changes were made to give the correct phone number and forms for reporting injuries/illness.

**WAC 296-305-01503 Accident investigation.**

- Housekeeping changes were made to give the correct phone number and forms for reporting injuries/illness.
- The title was amended to "Accident/Incident investigation," due to the difference in definitions in other L&I standards.
- Modified language to add exposure to substances known to cause occupational disease as an incident that requires investigation.

**WAC 296-305-01505 Accident prevention program.**

- The term "safety officer" was changed to "health and safety officer."

**WAC 296-305-01507 Fire department safety officer.**

- The term "safety officer" was changed to "health and safety officer."

**WAC 296-305-01509 Management's responsibility.**

- Requirements for management policies were added and clarified.

**WAC 296-305-01513 Safe place standards.**

- Changed wording from "All firefighting work methods," to "All work methods."

**WAC 296-305-01517 First-aid kits.**

- Removed the additional references to [the] chapter 296-800 WAC, sentence.

**WAC 296-305-02001 Personal protective equipment and protective clothing.**

- Terminology and NFPA editions were updated.
- Included information from the Washington Industrial Safety and Health Act (WISHA) directive that clarified the rule and removed the need for a directive.

**WAC 296-305-02017 Personal alert safety system (PASS) protection.**

- Changed wording from "working in a hazardous area" to "engage in structural fire fighting."
- Changed reference date to NFPA.
- Changed reference from "296-305-07019" to "296-305-07018."

**WAC 296-305-02019 Life safety ropes, harnesses, and hardware protection.**

- Changed wording from "All life safety ropes, harnesses, and hardware used by fire departments shall meet the applicable requirements of" to "Organizations performing rope rescue operations must make sure previously purchased life safety ropes and equipment comply with the 2001 edition of."
- Added language "Ropes and equipment purchased after the effective date of this rule must meet the 2006 edition of NFPA 1983, Standard on Life Safety Rope and Equipment for Emergency Services."
- Added information on Class III harnesses.

**WAC 296-305-02501 Emergency medical protection.**

- Changed reference date to NFPA.
- Removed references to chapter 296-823 and 296-62 WAC.
- Added a requirement that current guidelines issued by the Centers for Disease Control (CDC) and epidemiology be followed.

**WAC 296-305-04001 Respiratory equipment protection.**

- Requirements for respirator use and testing vendor-supplied breathing air were updated and clarified.

**WAC 296-305-04501 Automotive fire apparatus design and construction.**

- Changed reference to NFPA and United States Department of Transportation standards.
- Added language about securing equipment.

**WAC 296-305-04503 Automotive fire apparatus equipment.**

- Changed reference to United States Department of Transportation.

**WAC 296-305-04505 Automotive apparatus operational rules.**

- Changed language in additional reference section.

**WAC 296-305-04507 Fire apparatus maintenance and repair.**

- Added requirement that suppression components of emergency vehicles are only to be repaired by specifically qualified individuals.

**WAC 296-305-05013 Aircraft rescue and firefighting.**

- Updated standard to require compliance with NFPA.

**WAC 296-305-06001 Fire service equipment.**

- Updated references.

**WAC 296-305-06003 Testing fire service equipment.**

- Added testing requirements; removed requirements around life safety belts and rescue ropes.

**WAC 296-305-06501 Requirements for fire station facilities.**

- Changed the title of the section from "station" to "department."

**WAC 296-305-06503 General requirements.**

- Added language outlining requirements for departments that choose to install sliding poles.
- Added language addressing asbestos in properties used by fire departments.

**WAC 296-305-06505 Sanitation, disinfection, cleaning, and storage areas.**

- Changed language from "needs to be decontaminated and/or disinfected" to "... is contaminated or potentially contaminated."

**WAC 296-305-06507 Sleeping areas.**

- Added language "and carbon monoxide."

**WAC 296-305-06511 Indoor air quality.**

- Updated references.

**WAC 296-305-06513 Refueling areas.**

- Changed wording from "Uniform Fire Code" to "International Fire Code."

**WAC 296-305-06515 Hose drying towers.**

- Removed the additional reference language.

**WAC 296-305-06517 Drill tower training facilities.**

- Changed rappelling anchors support from four thousand five hundred to five thousand pounds per person.

**WAC 296-305-06519 Fire station equipment and tools.**

- Added the word "WAC" in a reference.

**WAC 296-305-07001 Wildland fire operations.**

- Updated, clarified and reordered the requirements relating to fighting wildfires. Added requirements about working in forested areas.
- Language throughout this section was modified to use the term wildland fire consistently, and to follow industry definitions.

**WAC 296-305-08000 Appendices.**

- Changed spelling of fungicidal.
- Updated wording for poly sheeting.
- Removed the appendices and pointed users to manufacturer's requirements of the NFPA standard.

**REPEALED SECTIONS:****WAC 296-305-01002 Effective date.**

- This section no longer applies to the rule.

**WAC 296-305-01009 Appeals.**

- The requirements in this section were moved to chapter 296-900 WAC, Administrative rules, in a previous rule making so are now being repealed from the firefighting standard.

**WAC 296-305-02003 Eye and face protection.**

- Requirements were moved to WAC 296-305-02004.

**WAC 296-305-02005 Hearing protection.**

- Requirements were moved to WAC 296-305-02004.

**WAC 296-305-02007 Hand protection.**

- Requirements were moved to WAC 296-305-02004.

**WAC 296-305-02009 Body protection.**

- Requirements were moved to WAC 296-305-02004.

**WAC 296-305-02011 Body armor.**

- Requirements were moved to WAC 296-305-02012.

**WAC 296-305-02013 Foot protection for structural firefighting.**

- Requirements were moved to WAC 296-305-02004.

**WAC 296-305-02015 Head protection.**

- Requirements were moved to WAC 296-305-02004.

**WAC 296-305-03001 Hazardous materials protection.**

- Requirements were moved to WAC 296-305-03002.

**WAC 296-305-04509 Aerial ladders.**

- Requirements combined with WAC 296-305-04511 Elevated platforms, and rewritten as WAC 296-305-04510 Aerial apparatus.

**WAC 296-305-04511 Elevated platforms.**

- Requirements combined with WAC 296-305-04509 Aerial ladders, and rewritten as WAC 296-305-04510 Aerial apparatus.

**WAC 296-305-05001 Emergency fireground operations—Structural.**

- Requirements revised and moved to WAC 296-305-05000 and 296-305-05002.

**WAC 296-305-05003 Confined space rescue operations.**

- Requirements updated and moved to the new Technical Rescue section, WAC 296-305-05101 through 296-305-05113.

**WAC 296-305-05005 Rope rescue operations.**

- Requirements updated and moved to the new Technical Rescue section, WAC 296-305-05101 through 296-305-05113.

**WAC 296-305-05007 Trench rescue operations.**

- Requirements updated and moved to the new Technical Rescue section, WAC 296-305-05101 through 296-305-05113.

**WAC 296-305-05009 Watercraft rescue operations.**

- Requirements updated and moved to the new Technical Rescue section, WAC 296-305-05101 through 296-305-05113.

**WAC 296-305-05011 Hazardous materials operations.**

- Requirements updated and moved to the new Technical Rescue section, WAC 296-305-05101 through 296-305-05113.

**WAC 296-305-05501 Fire training.**

- Combined requirements, updated and reordered into new section WAC 296-305-05502 Training and member development.

**WAC 296-305-05503 Summary of training requirements.**

- Combined requirements, updated and reordered into new section WAC 296-305-05502 Training and member development.

**WAC 296-305-06005 Ground ladders.**

- Requirements moved to WAC 296-305-06006 Ground ladders.

**WAC 296-305-06007 Electrical.**

- Requirements moved to WAC 296-305-06008 Electrical.

**WAC 296-305-07003 Personal protective clothing and equipment for wildland firefighting.****WAC 296-305-07005 Respiratory protection for wildland firefighters.****WAC 296-305-07007 Wildland personnel accountability.****WAC 296-305-07009 Apparatus standards for wildland firefighting.****WAC 296-305-07011 Occupant restraints and enclosures for wildland firefighting.****WAC 296-305-07013 Equipment for wildland firefighting.****WAC 296-305-07015 Aircraft operations for fighting wildland fires.****WAC 296-305-07017 First aid for wildland firefighters.****WAC 296-305-07019 Training for wildland firefighting.**

- The above sections were clarified, reordered and updated into the new and amended WAC 296-305-07001 through 296-305-07018.

Reasons Supporting Proposal: The department held extensive meetings with a wide-ranging group of stakeholders and the following are some of the many changes to our rules that were agreed upon:

- Use more current consensus standards as our references.
- Add in sections on incident management to be in line with national requirements.
- Address insufficiencies in wildland firefighting and technical rescue disciplines.
- Address other technical issues identified by the stakeholder groups.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. 1910.156.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Leland, Tumwater, Washington, (360) 902-4504; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Fire departments, as public agencies, do not fall under the purview of the Regulatory Fairness Act, which monitors the effects of rules on small businesses. However, a cost-benefit analysis has been prepared.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Devin Proctor, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5541, fax (360) 902-5619, e-mail devin.proctor@lni.wa.gov.

August 21, 2012

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 06-01-073, filed 12/20/05, effective 3/1/06)

**WAC 296-305-01003 Scope and application.** (1) The rules of this chapter shall apply with respect to any and all activities, operations and equipment of employers and employees involved in providing fire protection services which are subject to the provisions of the Washington Industrial Safety and Health Act of 1973 (chapter 49.17 RCW).

(2) The provisions of this chapter apply to all firefighters and their work places, including the fire combat scene. Although enforcement of applicable standards will result from provable violations of these standards at the fire combat scene, agents of the department will not act in any manner that will reduce or interfere with the effectiveness of the emergency response of a firefighting unit. Activities directly related to the combating of a fire will not be subjected to the immediate restraint provisions of RCW 49.17.130.

(3) In the development of this document many consensus standards of the industry were considered and evaluated as to adaptability to the Washington state fire service industry. Where adaptable and meaningful, the firefighter safety elements of these standards were incorporated into this WAC. Chapter 296-305 WAC, shall be considered as the firefighter safety standards for the state of Washington.

(4) The provisions of this chapter cover existing requirements that apply to all fire departments. All fire departments shall have in place their own policy statement and operating instructions that meet or exceed these requirements. This chapter contains state and/or federal performance criteria that fire departments shall meet.

(5) Unless specifically stated otherwise by rule, if a duplication of regulations, or a conflict exists between the rules regulating wildland firefighting and other rules in the chapter, only the rules regulating wildland firefighting shall apply to wildland firefighting activities and equipment.

(6) The provisions of this chapter shall be supplemented by the provisions of the general safety and health standards of the department of labor and industries (~~chapters 296-24, 296-62, 296-800, and 296-811 WAC~~). In the event of conflict between any provision(s) of this chapter and any provision(s) of the general safety and health standards, the provision(s) of this chapter shall apply.

(7) (~~The provisions of this standard do not apply to industrial fire brigades, as defined in this chapter.~~) Industrial fire brigades are covered under the provisions of chapter 296-811 WAC, Fire brigades.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-305-01005 Definitions.** Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

**Accident:** An unexpected event that interrupts or interferes with the orderly progress of the fire department operations and may or may not include personal injury or property damage.

**Accountability (tracking) system:** A system of firefighter accountability that provides for the tracking and inventory of all members.

**ACGIH:** American Conference of Governmental Industrial Hygienists.

~~(Aerial ladder: A ladder mounted on top of an apparatus, hydraulic or pneumatic controlled.~~

~~Aerial tower: Telescopic elevating platform or water tower assembly usually with a ladder on top of the section.~~

~~Aerial platform: A device consisting of two or more booms or sections with a passenger-carrying platform assembly.)~~

**ACM:** Asbestos-containing material: any material containing more than 1 percent asbestos.

**Aerial devices:** Fire apparatus-mounted aerial ladders, elevated platforms, and water towers.

**ANSI:** American National Standards Institute.

**Apparatus:** A mobile piece of fire equipment such as a pumper, aerial, tender, automobile, etc.

**Approved:**

(1) A method, equipment, procedure, practice, tool, etc., which is sanctioned, consented to, confirmed or accepted as good or satisfactory for a particular purpose or use by a person, or organization authorized to make such a judgment.

(2) Means approved by the director of the department of labor and industries or his/her authorized representative: Provided, however, That should a provision of this chapter state that approval by an agency or organization other than the department of labor and industries is required, such as Underwriters' Laboratories or the Bureau of Mines, the provisions of chapter 296-800 WAC shall apply.

~~(Audiogram: A chart, graph, or table resulting from an audiometric test showing an individual's hearing threshold levels as a function of frequency.~~

~~Authorized person: A person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the job site.~~

**Beacon:** A flashing or rotating light.)

**Asbestos:** Includes chrysotile, amosite, crocidolite, tremolite, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

**Belt:** See ladder belt and escape belt.

**Bloodborne pathogens:** Pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

**Blowup (wildfire):** Sudden increase in fire intensity or rate of spread sufficient to preclude direct control or to upset existing control plans. Often accompanied by violent convection and may have other characteristics of a fire storm.

~~((**Chemical protective clothing:** Items made from chemical resistive materials, such as clothing, hood, boots, and gloves, that are designed and configured to protect the wearer's torso, head, arms, legs, hands, and feet from hazardous materials. Chemical protective clothing (garments) can be constructed as a single, or multipiece, garment. The garment may completely enclose the wearer either by itself or in combination with the wearer's respiratory protection, attached or detachable hood, gloves, and boots.))~~

**CBRN:** Chemical, biological, radiological, and nuclear.

**Chief:** The employer representative highest in rank who is responsible for the fire department's operation.

**Cold zone:** The control zone of an incident that contains the command post and such other support functions as are deemed necessary to control the incident.

**Combat scene:** The site where the suppression of a fire or emergency exists.

~~((**Confinement:** Those procedures taken to keep a material in a defined or local area.))~~

**Confined space:** ~~((Means))~~ A space that is all of the following:

(1) Is large enough and arranged so ~~((configured that))~~ an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and

(3) Is not designed for continuous employee occupancy.

**Containment:** The actions taken to keep a material in its container (e.g. stop the release of the material or reduce the amount being released.)

**Contaminated:** The presence or the reasonably anticipated presence of nuisance materials foreign to the normal atmospheres, blood, hazardous waste, or other potentially infectious materials on an item or surface.

**Contaminated laundry:** Laundry which has been soiled with blood or other potentially infectious materials or may contain contaminated sharps.

**Contamination:** The process of transferring a hazardous material from its source to people, animals, the environment, or equipment, which may act as a carrier.

**dBA:** A measure of noise level expressed as decibels measured on the "A" scale.

~~((**Deck pipe:** A permanently mounted device which delivers a large stream of water.))~~

**Decontamination:**

(1) The physical or chemical process of reducing and preventing the spread of contamination from persons or equipment used at a hazardous materials incident.

(2) The use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

~~((**Department:** Department of labor and industries.~~

~~**Director of fire department:** The chief or principle administrator of the fire department.))~~

**Direct attack:** Any treatment applied directly to burning fuel such as wetting, smothering, or chemically quenching the fire or by physically separating the burning from unburned fuel.

**Director:** The director of the department of labor and industries, or his/her designated representative.

**Disinfection:** A procedure which inactivates virtually all recognized pathogenic microorganisms, but not necessarily all microbial forms (example: bacterial endospores) on inanimate objects.

**Disturb/disturbance:** Refers to activities that disrupt the matrix of, crumble or pulverize, or generate visible debris from ACM or PACM.

**Dive rescue (public safety diving):** The act of searching for or rescuing a viable or presumably viable person(s) while working in water using underwater apparatus which supplies compressed breathing gas at the ambient pressure.

**Double-layer woven clothing:** Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

**Drill tower:** A structure which may or may not be attached to the station and which is principally used for training firefighters in fire service techniques.

**Drinking water:** Potable water that is suitable to drink. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

**Driver/operator:** A person having satisfactorily completed the fire department's "requirements of driver/operator" of a specific piece of fire apparatus.

**Emergency:** A sudden and unexpected event calling for immediate action.

**Emergency incident:** A specific emergency operation.

**Emergency medical care:** The provision of treatment to, and/or transportation of, patients which may include first aid, cardiopulmonary resuscitation, basic life support, advanced life support, and other medical procedures that occur prior to arrival at a hospital or other health care facility.

**Emergency operations:** Activities of the fire department relating to rescue, fire suppression, emergency medical care, and special operations, including response to the scene of an incident and all functions performed at the scene.

**Employee:** An employee of an employer who is employed in the business of his/her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is their personal labor for an employer under this chapter whether by way of manual labor or otherwise. Also see "Member."

**Employer:** Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

**Employer representative:** A fire department officer authorized by the chief or director of the fire department to act in his/her behalf.

**Engine (pumper):** A piece of apparatus equipped with hose and a pump for the purpose of supplying water under pressure through hose lines.

~~**(Engineering control:** Any procedure other than an administrative control that reduces exposures by modifying the source or reducing the exposure to an individual. Examples of engineering controls include the use of isolation, containment, encapsulation, sound absorbing materials for noise control, and ventilation.~~

**Explosion proof equipment:** Equipment enclosed in a case that is capable of withstanding an explosion or a specified gas or vapor which may occur within it and of preventing the ignition of a specified gas or vapor surrounding the enclosure by sparks, flashes, or explosion of the gas or vapor within, and which operates at such an external temperature that it will not ignite a surrounding flammable atmosphere.

~~**Fastest means available:** The (nearest closest) telephone, portable radio, mobile radio, telephone/radio dispatcher or any other mode of mechanical communication.)~~

**Escape belt:** A device that fastens around the waist only and is intended to be used by the wearer only as an emergency self-rescue device.

**Escape rope:** A single-purpose emergency self-escape (self-rescue) rope, not classified as a life safety rope.

**Exclusion zone:** The control zone designated to exclude all unauthorized personnel, responders, and equipment.

**Note:** Examples of exclusion zones could be holes in floors, explosive devices, or collapse hazards.

**Extended attack:** Suppression activity for a wildfire that has not been contained or controlled by initial attack or contingency forces and for which more firefighting resources are arriving, en route, or being ordered by the initial attack incident commander.

**Extended attack incident:** A wildland fire that has not been contained or controlled by initial attack forces and for which more firefighting resources are arriving, en route, or being ordered by the initial attack incident commander. Extended attack implies that the complexity level of the incident will increase beyond the capabilities of initial attack incident command.

**Fire apparatus:** A fire department emergency vehicle used for rescue, fire suppression, or other specialized functions.

**Fire boat:** A fire department watercraft having a permanent, affixed firefighting capability.

~~**(Fire combat training:** Training received by firefighters on the drill ground, drill tower, or industrial site to maintain the firefighter's proficiency.)~~

**Fire department:** An organization or consortium of organizations providing any or all of the following: Rescue, fire suppression, and other related activities. For the purposes of this standard the term "Fire Department" shall include any public, private, or military organization engaging in this type of activity.

**Fire department facility:** Any building or area owned, operated, occupied, or used by a fire department on a routine basis. This does not include locations where a fire department may be summoned to perform emergency operations or other duties, unless such premises are normally under the control of the fire department.

~~**(Fire department safety officer:** The member of the fire department assigned and authorized as the principal safety officer to perform the duties and responsibilities specified in this standard.)~~

**Firefighter:** A member of a fire department whose duties require the performance of essential firefighting functions or substantially similar functions.

**Fire retardant:** Any material used to reduce, stop or prevent the flame spread.

**Fire suppression training:** Training received by firefighters on the drill ground, drill tower, or industrial site to maintain the firefighter's proficiency.

**Fly:** Extendible sections of ground or aerial ladders.

~~**(Foot stand, ladder:** Devices attached to inside of beams of ladders that when folded down, provide foot space.)~~

**Full body harness:** See life safety harness.

**Gross decontamination:** The initial phase of the decontamination process during which the amount of surface contaminant is significantly reduced.

**Ground jack:** Heavy jacks attached to frame of chassis of aerial-equipped apparatus to provide stability when the aerial portion of the apparatus is used.

~~**(Ground mobile attack:** The activities of wildland firefighting with hose lines being used by personnel working around a moving engine. See mobile attack.)~~

**Guideline:** An organizational directive that establishes a standard course of action.

**Halyard:** Rope used on extension ladders for the purpose of raising or lowering fly section(s). A wire cable may be referred to as a halyard when used on the uppermost fly section(s) of three or four section extension ladders.

**Harness:** See life safety harness.

**Hazard communication program:** A procedure to address comprehensively the issue of evaluating the potential hazards of chemicals and communicating information concerning hazards and appropriate protective measures to employees. See WAC 296-800-170, Chemical Hazard Communication Program.

**Hazard control zones:**

**Cold zone:** The control zone of an incident that contains the command post and such other support functions as are deemed necessary to control the incident.

**Note:** The cold zone established the public exclusion or clean zone. There are minimal risks of human injury or exposure in this zone.

**Exclusion zone:** The control zone designated to exclude all unauthorized personnel, responders, and equipment.

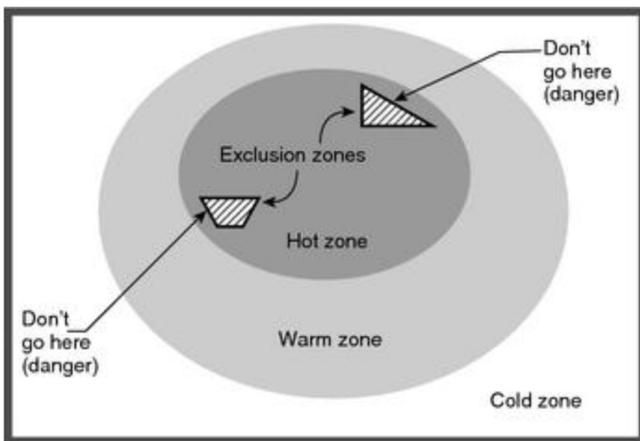
**Note:** Examples of exclusion zones could be holes in floors, explosive devices, or collapse hazards.

**Hot zone:** The control zone immediately surrounding the hazard area, which extends far enough to prevent adverse effects to personnel outside the zone. The hot zone is presenting the greatest risk to members and will often be classified as an IDLH atmosphere.

**Warm zone:** The control zone outside the hot zone where personnel and equipment decontamination and the hot zone support takes place.

**Note:** The warm zone is a limited access area for members directly aiding or in support of operations in the hot zone. Significant risk of human injury (respiratory, exposures, etc.) can still exist in the warm zone.

Hazard Zones:



**Hazards:** The characteristics of facilities, equipment, systems, property, hardware or other objects and those areas of structures or buildings posing a hazard greater than normal to the general occupancy or structures.

**Hazardous area:** The immediate area where members might be exposed to a hazard.

**Hazardous atmosphere:** ((Any atmosphere, either immediately or not immediately dangerous to life or health, which is oxygen deficient or which contains a toxic or disease-producing contaminant.)) An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (escape unaided from a permit-required confined space), injury or acute illness caused by one or more of the following:

- Flammable gas, vapor, or mist in excess of 10% of its lower flammable limit (LFL);
- Airborne combustible dust at a concentration that meets or exceeds its LFL;
- Atmospheric oxygen concentration below 19.5% or above 23.5%;
- Atmospheric concentration of any substance which may exceed a permissible exposure limit. For additional information about atmospheric concentration, see chapter 296-62 WAC, Parts F, G, and I, General occupational health

standards and chapter 296-841 WAC, Airborne contaminants.

**Hazardous condition:** The physical condition or act which is causally related to accident occurrence. The hazardous condition is related directly to both the accident type and the agency of the accident.

**Hazardous material:** A substance (solid, liquid, or gas) that when released is capable of creating harm to people, the environment, and property.

**Hazardous substances:** Substances that present an unusual risk to persons due to properties of toxicity, chemical activity, corrosivity, etiological hazards of similar properties.

((HEPA filtration: High efficiency particulate air filtration found in vacuum system capable of filtering 0.3 micron particles with 99.97% efficiency.))

**Health and safety officer:** The member of the fire department assigned and authorized as the administrator of the fire department health and safety program.

**Heat-related illness:** A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

**Hose bed:** Portion of fire apparatus where hose is stored.

**Hose tower:** A vertical enclosure where hose is hung to dry.

**Hot zone:** ((Area)) The control zone immediately surrounding ((a hazardous materials incident)) the hazard area, which extends far enough to prevent adverse effects ((from hazardous materials releases)) to personnel outside the zone. ((This)) The hot zone is ((also referred to as the exclusion zone or the restricted zone in other documents)) the area presenting the greatest risk to members and will often be classified as an IDLH atmosphere.

**Ice rescue:** The rescue of a person(s) who is afloat within an opening in the frozen surface or on the frozen surface of a body of water.

**Identify:** To select or indicate verbally or in writing using recognized standard terms. To establish the identity of; the fact of being the same as the one described.

**IDLH:** Immediately dangerous to life and health.

**Imminent hazard (danger):** An act or condition that is judged to present a danger to persons or property and is so immediate and severe that it requires immediate corrective or preventative action.

**Incident commander:** The person in overall command of an emergency incident. This person is responsible for the direction and coordination of the response effort.

**Incident command system (ICS):** A system that includes: Roles, responsibilities, operating requirements, guidelines and procedures for organizing and operating an on-scene management structure.

**Incident safety officer:** The person assigned the command staff function of safety officer in the incident command system.

**Incipient (phase) fire:** The beginning of a fire; where the oxygen content in the air has not been significantly reduced and the fire is producing minute amounts of water vapor, carbon dioxide, carbon monoxide and other gases; the room has a normal temperature and can be controlled or

extinguished with a portable fire extinguisher or small hose, e.g., a kitchen stove fire.

**Indirect attack:** A method of suppression in which the control line is located some considerable distance away from the fire's active edge. Generally done in the case of a fast-spreading or high-intensity fire and to utilize natural or constructed firebreaks or fuelbreaks and favorable breaks in the topography. The intervening fuel is usually backfired; but occasionally the main fire is allowed to burn to the line, depending on conditions.

**Industrial fire brigade:** An organized group of employees whose primary employment is other than fire-fighting who are knowledgeable, trained and skilled in specialized operations based on site-specific hazards present at a single commercial facility or facilities under the same management.

~~((Initial stage (initial action): Shall encompass the control efforts taken by resources which are first to arrive at an incident.))~~

**Initial action:** The actions taken by the first resources to arrive at a wildfire or wildland fire use incident. Initial actions may be size up, patrolling, monitoring, holding action or aggressive initial attack.

**Initial attack:** A planned response to a wildfire given the wildfire's potential fire behavior. The objective of initial attack is to stop the fire and put it out in a manner consistent with firefighter and public safety and values to be protected.

**Initial fire suppression training:** The training of firefighters in recognizing sources and locations of potential fires and the method of fire suppression to be used.

**Initial stages:** Tasks undertaken by the first arriving company with only one crew assigned or operating in the hot zone.

**Injury:** Physical damage suffered by a person that requires treatment by a practitioner of medicine (a physician, nurse, paramedic or EMT) within one year of the incident regardless of whether treatment was actually received.

**Interior structural firefighting:** The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. See structural firefighting.

**Known rescue:** A situation of compelling evidence where a member sees, hears, or is directly told of a trapped and viable victim by an occupant who has escaped or is a credible witness.

**Ladder belt:** A device that fastens around the waist only and is used as a positioning device for a person on a ladder.

**Life safety or rescue rope:** Rope dedicated solely for the purpose of constructing lines for supporting people during rescue, firefighting, or other emergency operations, or during training evolutions.

~~((Line: Rope when in use.))~~

**Live fire:** Any unconfined open flame or device that can propagate fire to the building, structure, or other combustible materials.

**Live fire training:** Any fire set within a structure, tank, pipe, pan, etc., under controlled conditions to facilitate the training of firefighters under actual fire conditions.

**Locking in:** The act of securing oneself to a ladder by hooking a leg over a rung and placing top of foot against the other leg or against the ladder.

~~((Manned station: See staffed station.))~~

**May:** A permissive use or an alternative method to a specified requirement.

**Mayday:** The nationally adopted "call for help" term used to indicate that an emergency responder is in a situation of imminent peril where they are in need of immediate help.

**Member:** A person involved in performing the duties and responsibilities of a fire department under the auspices of the organization. A fire department member may be a full-time or part-time employee or a paid or unpaid volunteer, may occupy any position or rank within the fire department, and engages in emergency operations. Also see Employee.

**Mobile attack:** The act of fighting wildland fires from a moving engine.

~~((Monitor: A portable appliance that delivers a large stream of water.))~~

**Mop up:** The act of making a wildfire/wildland fire safe after it is controlled, such as extinguishing or removing burning materials along or near the control line, felling snags, trenching logs to prevent rolling.))

**NFPA:** National Fire Protection Association.

~~((NIMS:))~~ **NIMS:** The National ((Interagency)) Incident Management System.

**NIOSH:** National Institute of Occupational Safety and Health.

~~((Nondestructive testing: A test to determine the characteristics or properties of a material or substance that does not involve its destruction or deterioration.))~~

**Nonkid:** The surface treatment that lessens the tendency of a foreign substance to reduce the coefficient of friction between opposing surfaces.

**Occupational exposure:** Means reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

**Officer:** (1) Person in charge of a particular task or assignment.

(2) A supervisor.

**OSHA:** Occupational Safety and Health Administration.

**Other potentially infectious materials (OPIM):** (1) The following body fluids: Semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

**Outrigger:** Manually or hydraulically operated metal enclosures and jacks which are extended and placed in contact with the ground to give the apparatus a wide, solid base to support different loads.

~~((Overhauling: That portion of fire extinguishment involving discovery of hidden fires or smoldering material.))~~  
**Overhaul:** A firefighting term involving the process of final extinguishment after the main body of a fire has been knocked down. All traces of fire must be extinguished at this time.

**PACM:** Presumed asbestos-containing material. Thermal system insulation and surfacing material found in buildings, vessels and vessel sections constructed no later than 1980.

**PASS:** Personal alert safety system.

**PEL:** Permissible exposure limit.

**Personal protective equipment (PPE):** (1) The equipment provided to shield or isolate a person from the chemical, physical, and thermal hazards that may be encountered at a hazardous materials incident. Personal protective equipment includes both personal protective clothing and respiratory protection. Adequate personal protective equipment should protect the respiratory system, skin, eyes, face, hands, feet, head, body, and hearing.

(2) Specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts, or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.

~~((Place of employment: Any premises, room or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control. For the purposes of this code, fireground and emergency scenes are also considered places of employment.))~~

**Platform:** The portion of a telescoping or articulating boom used as a working surface.

**Positive communication:** Visual, audible, physical, safety guide rope, or electronic means which allows for two way message generation and reception.

**PPE:** Personal protective equipment.

~~((Prefire training: The training of firefighters in recognizing sources and locations of potential fires and the method of fire combat to be used.))~~

**Probable fatality:** (1) An occupational injury or illness, which, by the doctor's prognosis, could lead to death.

(2) An occupational injury or illness, which by its very nature, is considered life threatening.

**Protective clothing:** Equipment designed to protect the wearer from heat and/or hazardous materials contacting the skin or eyes. Protective clothing is divided into five types:

- (1) Structural firefighting protective clothing;
- (2) Liquid splash-protective clothing;
- (3) Vapor-protective clothing;
- (4) High temperature-protective proximity clothing; and
- (5) Wildland firefighting clothing.

**Note:** See Protective ensemble.

**Protective ensemble:** Multiple elements of clothing and equipment designed to provide a degree of protection for firefighters from adverse exposures to the inherent risks of structural firefighting operations and certain other emergency operations. The elements of the protective ensemble are helmets, coats, trousers, gloves, footwear, interface components

(hoods), and if applicable, personal alert system (PASS) devices, and self-contained breathing apparatus.

**Proximity protective clothing:** Radiant reflective protective garments configured as a coat and trousers, or as a coverall, and interface components that are designed to provide protection for the firefighter's body from conductive, convective, and radiant heat.

**Pumper:** See engine.

**Qualified:** One who by possession of a recognized degree, certificate or professional standing, or who by knowledge, training or experience has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work or the project.

**Rapid intervention ((~~team (RIT))~~) crew (RIC):** On-scene team of at least two members designated, dedicated and equipped to effect an immediate rescue ((~~operation~~)) of firefighters if the need arises (also known as RIT).

**RCW:** Revised Code of Washington.

**Rehabilitation:** The process of providing mental and medical evaluation, rest, hydration, and nourishment to members who are engaged in emergency operations.

**Rescue:** Those activities directed at locating endangered persons at an emergency incident and removing those persons from danger.

**Rescue craft:** Any fire department watercraft used for rescue operations.

**Respirator:** A device designed to protect the wearer from breathing harmful atmospheres. See respiratory protection.

**Respiratory equipment:** Self-contained breathing apparatus designed to provide the wearer with a supply of respirable atmosphere carried in or generated by the breathing apparatus. When in use, this breathing apparatus requires no intake of air or oxygen from the outside atmosphere.

(1) Respirators (closed circuit): Those types of respirators which retain exhaled air in the system and recondition such air for breathing again.

(2) Respirators (open circuit): Those types of respirators which exhaust exhaled air to the outside of the mask into the ambient air.

(3) Respirators (demand): Those types of respirators whose input air to the mask is started when a negative pressure is generated by inhalation.

(4) Respirators (pressure demand): Those types of respirators which constantly and automatically maintain a positive pressure in the mask by the introduction of air when the positive pressure is lowered (usually from .018 psi to .064 psi) through the process of inhalation or leakage from the mask.

**Respiratory protection:** Equipment designed to protect the wearer from the inhalation of contaminants. Respiratory protection is divided into three types:

(1) Positive pressure self-contained breathing apparatus (SCBA);

(2) Positive pressure airline respirators;

(3) Negative pressure air purifying respirators.

**Responding:** The usual reference to the act of responding or traveling to an alarm or request for assistance.

**Risk assessment:** To set or determine the possibility of suffering harm or loss, and to what extent.

**Rope rescue equipment:** Components used to build rope rescue systems including life safety rope, life safety harnesses and auxiliary equipment.

**Rope rescue system:** A system composed of rope rescue equipment and an appropriate anchor system intended to support people during rescue, firefighting, or other emergency operations, or during training evolutions.

**Safe and healthful working environment:** The work surroundings of an employee with minimum exposure to unsafe acts and/or unsafe conditions.

~~((**Safety officer:** Either the fire department safety officer or an assistant safety officer (see fire department safety officer).))~~

**Safety net:** A rope or nylon strap net not to exceed 6-inch mesh, stretched and suspended above ground level at the base of drill tower, and at such a height that a falling body would be arrested prior to striking the ground.

**Scabbard:** A guard which will prevent accidental injury and covers the blade and pick of an axe or other sharp instrument when worn by the firefighter.

**SCBA:** Self contained breathing apparatus.

**Service testing:** The regular, periodic inspection and testing of apparatus and equipment according to an established schedule and procedure, to insure that it is in safe and functional operating condition.

**Shall:** Mandatory.

**Should:** Recommended.

~~((**Signalman:** A person so positioned that he/she can direct the driver when the driver's vision is obstructed or obscured.~~

~~**SOP:** Standard operating procedure or guidelines.~~

~~**Staffed station:** A fire station continuously occupied by firefighters on scheduled work shifts. The staffed station may also serve as headquarters for volunteers.~~

**Standard operating procedure or guidelines:** An organizational directive that establishes a standard course of action. ((See SOP.))

**Standby firefighters:** On-scene members designated to effect an immediate rescue of the initial team operating in the hot zone.

**Station (fire station):** Structure in which fire service apparatus and/or personnel are housed.

**Structural firefighting:** The activities of rescuing, fire suppression, and property conservation involving buildings, enclosed structures, aircraft, vehicles, vessels, or similar properties that are involved in a fire or emergency situation. See interior structural firefighting.

**Structural firefighting protective clothing:** This category of clothing, often called turnout or bunker gear, means the protective clothing normally worn by firefighters during structural firefighting operations. It includes a helmet, coat, pants, boots, gloves, and a hood. Structural firefighters' protective clothing provides limited protection from heat but may not provide adequate protection from the harmful gases, vapors, liquids, or dusts that are encountered during hazardous materials incidents.

~~((**Support function:** A hazardous chemical operation involving controlled chemical uses or exposures in nonflammable atmospheres with minimum threats in loss of life, personnel injury, or damage to property or to the environment.~~

~~Functions include decontamination, remedial cleanup of identified chemicals, and training.~~

~~**Support function protective garment:** A chemical protective suit that meets the requirements of NFPA Standard on Support Function Garments, 1993.)~~

**Surf rescue:** The rescue of a person(s) who is afloat on the surface or the subsurface retrieval of a person(s) submerged in ocean water or bodies of water that are connected to oceans that either experience a twice daily rise and fall of their surface caused by gravitational pull of the moon or experience a corresponding ebb and flow of water in response to tides with a surf height of 1 foot or greater.

**Surface water rescue:** The rescue of a person(s) who is afloat on the surface of a body of water. A trained rescuer (surface based swimmer) may dive for submerged victims, limited to the rescuer's ability, with no sustained underwater capability other than a mask, fins, and snorkel in relatively shallow depths and retrieve or mark a victim.

**Swift water rescue:** The removal of person(s) from threat or harm from water that is moving faster than walking pace (1 Knot, 1.85 km/hr, 1.15 mph).

**Tail/running board:** Standing space on the side or rear of an engine or pumper apparatus.

**Team:** Two or more individuals who are working together in positive communication with each other through visual, audible, physical, safety guide rope, electronic, or other means to coordinate their activities and who are in close proximity to each other to provide assistance in case of emergency.

**Tillerman:** Rear driver of tractor-trailer aerial ladder.

**Trench:** A narrow excavation made below the surface of the ground. The depth is generally greater than the width, but the width of a trench is not greater than 15 feet.

**Turnout clothing:** See structural firefighting protective clothing.

**Turntable:** The rotating surface located at the base of an aerial ladder, or boom, on aerial apparatus.

~~((**Universal precaution:** An approach to infection control. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.)~~

**Uncontrolled fire:** Any fire which threatens to destroy life, property, or natural resources; and (a) is not burning within the confines of firebreaks; or (b) is burning with such intensity that it could not be readily extinguished with ordinary tools commonly available.

**Urban wildfire:** An uncontained fire requiring suppression action, usually spreading through ground cover, vegetative fuels, brush, grass, and landscaping; often threatening residential and commercial structures within an urban environment with access to established roadways and water systems.

**Vapor barrier:** Material used to prevent or substantially inhibit the transfer of water, corrosive liquids and steam or other hot vapors from the outside of a garment to the wearer's body.

**Vapor barrier clothing:** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes

encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

**Variance:** An allowed or authorized deviation from specific standard(s) when an employer substitutes measures which afford an equal degree of safety. Variances are issued as temporary or permanent with interim measures issued, when requested, until a determination or decision is made.

**Vessel:** Means every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, including special-purpose floating structures not primarily designed for or used as a means of transportation on water.

**WAC:** Washington Administrative Code.

**Warm zone:** The control zone outside the hot zone where personnel and equipment decontamination and hot zone support take place.

**Note:** The warm zone is a limited access area for members directly aiding or in support of operations in the hot zone. Significant risk of human injury (respiratory, exposures, etc.) can still exist in the warm zone.

**Water rescue:** Any incident that involves the removal of victim(s) from any body of water other than a swimming pool. This includes rivers, creeks, lakes, washes, storm drains, or any body of water, whether still or moving.

**Wheel blocks (chocks):** A block or wedge placed under a wheel to prevent motion.

~~((Wildfire: An unplanned and unwanted fire requiring suppression action; an uncontrolled fire, usually spreading through vegetative fuels and often threatening structures.~~

~~**Wildland fire:** A fire burning in natural vegetation that requires an individual or crew(s) to expend more than one hour of labor to confine, control and extinguish. Agencies may substitute crews to avoid the one-hour bench mark or increase crew size to complete the job in less than one hour. One hour was chosen as the maximum time that individuals should work in high temperatures in structural protective clothing-))~~

**Wildland:** An area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar transportation facilities. Structures, if any, are widely scattered.

**Wildland fire:** Any nonstructure fire that occurs in the wildland.

**Wildland firefighting:** The activities of fire suppression and property conservation in woodlands, forests, grasslands, brush, and other such vegetation or any combination of vegetation, that is involved in a fire situation but is not within buildings or structures.

**Wildland firefighting enclosure:** A fire apparatus enclosure with a minimum of three sides and a bottom.

**Wildland urban interface:** The line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

**WISHA:** Washington Industrial Safety Health Act.

**Work environment:** The surrounding conditions, influences or forces to which an employee is exposed while working.

~~((Workplace: See place of employment.~~

~~**WRD:**—WISHA regional directive-)) Any premises, room or other place where an employee or employees are~~

employed for the performance of labor or service over which the employer has the right of access or control. For the purposes of this code, fireground and emergency scenes are also considered places of employment.

**Work/rest ratio:** An expression of the amount of rest that is required for each hour an individual is in work status. Current NWCG guidelines require one hour of rest for every two hours in work status.

**AMENDATORY SECTION** (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-01007 Variance and procedure.** (1) Conditions may exist in operations that a state standard will not have practical use. The director may issue a variance from the requirements of the standard when another means of providing equal protection is provided.

(2) Applications for variances will be reviewed and investigated by the department. Variances granted shall be limited to the specific WAC code covered in the application and may be revoked for cause. The variance shall remain prominently posted on the premises while in effect.

Note: Variance forms may be obtained from the department upon request. Requests for variance from safety and health standards shall be made in writing to the assistant director, Consultation and Compliance Services Division, Department of Labor and Industries, P.O. Box 44600, Olympia, Washington 98504-4600. (((Reference RCW 49.17.080 and 49.17.090-)))

**AMENDATORY SECTION** (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

**WAC 296-305-01501 Injury and illness reports for firefighters.** (1) Notice of injury or illness.

(a) ~~((Whenever an occupational accident causes injury or illness to a firefighter or other employee, or whenever a firefighter or other employee becomes aware of an illness apparently caused by occupational exposure, it shall be the duty of such a firefighter or other employee, or someone on his/her behalf, to report the injury or illness to the employer before the end of his/her duty period but not later than twenty-four hours after the incident-))~~ Employees must report work-related injuries or illnesses to their employer before the end of their duty period, but not later than twenty-four hours after the incident.

(b) Exception: In the event that symptoms of an occupational injury or illness are not apparent at the time of the incident, the employee shall report the symptoms to his/her employer within forty-eight hours after becoming aware of the injury or illness.

(c) Within eight hours after the fatality or probable fatality of any firefighter or employee from a work-related incident or the inpatient hospitalization of any employee as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality/hospitalization by telephone (1-800-423-7233) or in person, to the nearest office of the department ~~((or by using the OSHA toll-free central telephone number, 1-800-321-6742)).~~

(i) This requirement applies to each such fatality or hospitalization which occurs within thirty days of the incident.

(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.

(iii) Each report required by this subsection shall relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

(2) Recordkeeping - Written reports; all fire service employers shall maintain records of occupational injuries and illnesses. Reportable cases include every occupational death, every occupational illness, or each injury that involves one of the following: Unconsciousness, inability to perform all phases of regular duty-related assignment, inability to work full time on duty, temporary assignment, or medical treatment beyond first aid.

(3) All fire departments shall record occupational injury and illnesses on ~~((forms OSHA 101 Supplementary Record Occupational Injuries and Illnesses and OSHA 200 Log summary. Forms other than OSHA 101 may be substituted for the Supplementary Record of Occupational Injuries and Illnesses if they contain the same items))~~ OSHA Form 300, Log of Work-Related Injuries and Illnesses.

(4) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from ~~((the Form OSHA No. 200))~~ OSHA Form 300A, Summary of Work-Related Injuries and Illnesses and the following information from that form: Calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. ~~((A Form OSHA No. 200))~~ AN OSHA Form 300A shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted. The summary shall be completed by February 1 each calendar year. The summary covering the previous calendar year shall be posted no later than February 1st, and shall remain in place until ~~((March 1))~~ April 30th.

AMENDATORY SECTION (Amending WSR 09-01-158, filed 12/23/08, effective 3/1/09)

**WAC 296-305-01503 Accident/incident investigation.** (1) After the emergency actions following accidents that cause serious injuries ~~((that have))~~ with immediate symptoms or incidents resulting in exposure to occupational disease-causing chemicals or physical agents, a preliminary investigation of the cause ~~((of the accident))~~ shall be conducted. The investigation shall be conducted by a person designated as qualified by the employer. The fire department shall establish a written procedure and a program for investigating, and evaluating the facts, relating to the cause of accidents. The findings of the investigation shall be documented by the employer for reference at any following formal investigations.

(2) ~~((Within eight hours after the fatality or probable fatality of any firefighter or employee from a work-related~~

~~incident or the inpatient hospitalization of any employee as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality/hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.~~

~~((3))~~ Equipment involved in an accident resulting in an immediate or probable fatality((-)) shall not be moved((-)) until a representative of the ((consultation and compliance services)) division of occupational safety and health investigates the accident and releases such equipment, except where removal is essential to prevent further accident. When necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

~~((4))~~ (3) Upon arrival of the department's investigator, the employer shall assign to assist the investigator such personnel as are deemed necessary by the department to conduct the investigation.

~~((5))~~ (4) The fire department shall preserve all records, photographic materials, audio, video, recordings, or other documentation concerning an accident.

~~((Reference: WAC 296-24-020 (2), (3).))~~

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-01505 Accident prevention program.**

(1) All fire departments shall develop and implement a written safety program.

(2) Fire department safety programs shall have an assigned health and safety officer.

(3) Each employer shall develop a formal accident-prevention program, tailored to the needs of the fire department and to the type of hazards involved. The department of labor and industries' consultation and compliance services division may be contacted for assistance in developing appropriate programs.

~~((a))~~ A safety orientation program describing the employer's safety program shall include:

~~((b))~~ (a) How and when to report injuries, including instruction as to the location of first-aid facilities.

~~((c))~~ (b) How to report unsafe conditions and practices.

~~((d))~~ (c) The use and care of required personal protective equipment.

~~((e))~~ (d) The proper actions to take in event of emergencies including the routes of exiting from areas during emergencies.

~~((f))~~ (e) Identification of the hazardous gases, chemicals or materials involved, along with the instructions on the safe use and emergency action following accidental exposure.

~~((g))~~ (f) A description of the employer's total safety program.

~~((h))~~ (g) An on-the-job review of the practices necessary to perform the initial job assignments in a safe manner.

(4) Fire departments shall have a safety committee to serve in an advisory capacity to the fire chief. The number of employer-selected members shall not exceed the number of employee-elected members.

(5) The frequency of safety meetings shall be determined by the safety committee, but shall not be less than one hour per calendar quarter, however, special meetings may be held at the request of either party.

(6) Minutes shall be taken of all safety meetings. After review by the chief or his/her designee the minutes shall be conspicuously posted at all stations.

(7) Employee submitted written suggestions or complaints shall be considered. Action recommendations by the committee shall be transmitted in writing to the fire chief. The chief or his/her designated agent will reply to the submitter.

(8) Inspections of fire stations shall be made at least monthly and records maintained to ensure that stations are reasonably free of recognized hazards. These inspections shall include, but not be limited to, tools, apparatus, extinguishers, protective equipment, and life safety equipment.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-01507 Fire department health and safety officer.** (1) The duties and responsibilities of the fire department health and safety officer shall include, but are not limited to:

- (a) Plan and coordinate safety activities.
- (b) Work closely with the safety committee.
- (c) Ensure accidents are investigated.
- (d) Devise corrective measures to prevent accidents.

(2) Realizing safety training and recordkeeping are management's responsibility, the fire department health and safety officer shall ensure the following requirements are being met:

- (a) Ensure safety training for all employees.
- (b) Ensure safety directives are complied with.
- (c) Ensure that records are kept, but not limited to the following:

- (i) Accidents;
- (ii) Injuries;
- (iii) Inspections;
- (iv) Exposures;
- (v) Medical monitoring;
- (vi) Safety meetings;
- (vii) Apparatus;
- (viii) Equipment;
- (ix) Protective clothing;
- (x) Other fire department safety activities.

(3) The fire department health and safety officer, through the fire chief, shall have the authority and responsibility to identify and recommend correction of safety and health hazards.

(4) The fire department health and safety officer shall maintain a liaison with staff officers regarding recommended changes in equipment, procedures, and recommended methods to eliminate unsafe practices and reduce existing hazardous conditions.

Additional Reference: NFPA 1521 Standard for Fire Department Safety Officer, may be used as a guide for duties and responsibilities relating to the safety officer.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-305-01509 Management's responsibility.**

(1) It shall be the responsibility of management to establish, supervise, maintain, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment, as it applies to (~~noncombat conditions or to combat conditions at a fire scene after the fire has been extinguished, as determined by the officer in charge~~) both nonemergency and emergency conditions.

(b) An accident prevention program as required by this chapter.

(c) Programs for training employees in the fundamentals of accident prevention.

(d) Procedures to be used by the fire department health and safety officer and incident commander to ensure that emergency medical care is provided for members on duty.

(e) An accident investigation program as required by this chapter.

(f) Policies that clarify "rules of engagement" or parameters when personnel should commit to work activities within a hot zone.

(g) Policies that clarify the right of every employee to notify the employer of potential life-threatening situations during emergency operations and processes that clarify how this notification is to occur.

(2) The fire department shall be responsible for providing suitable expertise to comply with all testing requirements in this chapter. Such expertise may be secured from within the fire department, from equipment and apparatus manufacturers, or other suitable sources.

(3) Members who are under the influence of alcohol or drugs shall not participate in any fire department operations or other functions. This rule does not apply to persons taking prescription drugs as directed by a physician or dentist providing such use does not endanger the worker or others.

(4) Alcoholic beverages shall not be allowed in station houses, except at those times when station houses are used as community centers, with the approval of management.

(5) A bulletin board or posting area exclusively for safety and health and large enough to display the required safety and health posters. The WISHA poster (WISHA form F416-081-000) and other safety education material shall be provided. A bulletin board of "white background" and "green trim" is recommended.

(6) The fire department shall develop and maintain a hazard communication program as required by WAC 296-800-170, which will provide information to all employees relative to hazardous chemicals or substances to which they are exposed, or may routinely be exposed to, in the course of their employment.

(7) Personnel.

(a) The employer shall assure that employees (~~who are expected to do interior structural firefighting~~) are physically capable of performing duties that may be assigned to them (~~during emergencies~~).

(b) The employer shall not permit employees with known physical limitations reasonably identifiable to the employer, for example, heart disease or seizure disorder, to

participate in (~~structural firefighting emergency~~) physically demanding activities unless the employee has been released to participate in such activities by a physician (~~to participate in such activities~~) or other licensed health care professional (LHCP) who is qualified by training or experience as determined by the fire department to evaluate firefighters.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-01513 Safe place standards.** (1) Every employer shall furnish and require the use of appropriate safety devices and safeguards. All (~~firefighting~~) work methods, and operations shall be so designed as to promote the safety and health of employees. The employer shall do everything reasonably necessary to protect the safety and health of employees.

(2) No firefighter or other employee, employer or employer representative shall:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice or warning furnished for use in any employment or place of employment.

(b) Interfere in any way with the use of any safety device, method or process adopted for the protection of any employee.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-305-01517 First-aid kits.** (1) To assure the emergency medical care of the firefighters there shall be present at each emergency incident at least the following items:

- 1 (one) utility scissors, EMT-type
- 1 CPR barrier
- 3 (three) rolls 1 inch adhesive tape
- 6 (six) 4" x 4" sterile, individually wrapped gauze pads
- 4 (four) combination pads, sterile, individually wrapped
- 4 (four) soft roller bandages, assorted size, sterile, individually wrapped cling type
- 2 (two) burn sheets, sterile, individually wrapped
- 2 (two) triangular bandages
- 1 (one) multitrauma dressing, sterile
- 2 (two) supply disposable gloves
- 2 (two) wire splints or equivalent

(2) All fire stations shall maintain a first-aid kit. The kit shall contain at least the following items:

- 6 (six) 4" x 4" sterile, individually wrapped gauze pads
- 4 (four) combination pads, sterile, individually wrapped
- 2 (two) rolls 1 inch adhesive tape
- 4 (four) soft roller bandages, assorted size, sterile, individually wrapped cling type
- 2 (two) triangular bandages
- 1 (one) utility scissors, EMT-type
- 1 (one) pair tweezers
- 1 (one) package assorted adhesive bandages

(3) All fire apparatus shall contain a first-aid kit as described in WAC 296-800-150.

(4) All fire departments providing emergency medical services to the public shall conform to the requirements of chapter 18.73 RCW Emergency Care and Transportation Services (and if applicable, chapter 248-17 WAC, Ambulance

Rules and Regulations) which require additional first-aid equipment.

~~((Additional references: Chapter 296-800 WAC.))~~

AMENDATORY SECTION (Amending WSR 99-05-080, filed 2/17/99, effective 6/1/99)

**WAC 296-305-02001 Personal protective equipment and protective clothing.**

**Note:** For wildland firefighting personal protective equipment and clothing requirements see WAC ~~((296-305-07003))~~ 296-305-07012, Personal protective clothing and equipment for wildland firefighting.

(1) Employers shall provide and maintain at no cost to the employee the appropriate protective ensemble/protective clothing to protect from the hazards to which the member is or is likely to be exposed. Information on hazard assessments can be found in WAC 296-800-16005. Employers shall ensure the use of all protective equipment and clothing required by this standard. ~~((Employers shall assure that the protective clothing and equipment ordered or purchased after the effective date of this standard meets the requirements of this standard.))~~ Full protective equipment designated for the task, shall be worn for all department activities.

(2) Firefighters shall be trained in the function, donning and doffing, care, use, inspection, maintenance and limitations of the protective equipment assigned to them or available for their use.

(3) Protective clothing and protective equipment shall be used and maintained in accordance with manufacturer's instructions. A written maintenance, repair, retirement, servicing, and inspection program shall be established for protective clothing and equipment. Specific responsibilities shall be assigned for inspection and maintenance. This requirement applies to firefighter's personally owned equipment as well as equipment issued by the employer.

(4) The fire department shall provide for the cleaning of protective clothing and contaminated station/work uniforms at no cost to the employee. Such cleaning shall be performed by either a cleaning service, or at a fire department facility, that is equipped to handle contaminated clothing. If the fire department does its own cleaning, they shall follow the manufacturer's recommended cleaning procedure or the 2008 edition of NFPA 1851, Standard on Selection, Care and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.

~~((Note: See Appendix A.))~~

(5) Personal protective equipment and clothing shall be of a type specified by NIOSH, MSHA, NFPA, ANSI, or as specifically referenced in the appropriate section of this chapter.

(6) Station/work uniforms. Station/work uniforms are not themselves intended as primary protective garments.

(a) Station/work uniforms if provided, shall meet the requirements as specified in the 1990 or 1994 edition of NFPA 1975, Standard on Station/Work Uniforms for Fire and Emergency Services. However, departments are not required to provide station/work uniforms for their employees.

(b) ~~((All station/work uniforms purchased after the effective date of this regulation shall meet the requirements set forth in this standard.~~

~~(e))~~ Station/work uniforms include trousers, and/or coveralls, but exclude shirts, underwear, and socks.

~~((d))~~ (c) Members shall not wear any clothing that is determined to be unsafe due to poor thermal stability or poor flame resistance when engaged in or exposed to the hazards of structural firefighting. ~~((Because it is impossible to ensure that every member will respond to an incident in a station/work uniform or will change out of fabrics that have poor thermal stability or ignite easily, before donning protective garments,))~~ The fire department shall inform members of the hazards of fabrics that melt, drip, burn, stick to the skin and cause burns to the wearer due to poor thermal stability or poor flame resistance, and shall prohibit their use by employees. Garments that are not provided by the employer, and that are made from all or mostly cotton, will meet the requirements of this section.

~~((e))~~ (d) Garments meeting the requirements of WAC ~~((296-305-07003))~~ 296-305-07012(1), meet the intent of this section.

~~((f))~~ Station/work uniforms purchased prior to the effective date of this chapter shall be acceptable for a period of two years or until the employers current inventory has been exhausted, whichever comes first.)

(7) ~~((Turnout clothing/pants and coat:))~~

Proximity firefighting clothing:

(a) All turnout clothing used as proximity clothing shall meet the requirements of the 2000 edition of NFPA, 1976 Standard on Protective ((Clothing)) Ensemble for Proximity Firefighting((-1992 edition)).

(b) There shall be at least a two-inch overlap of all layers of the protective coat and the protective trousers so there is no gapping of the total thermal protection when the protective garments are worn. The minimum overlap shall be determined by measuring the garments on the wearer, without SCBA, with the wearer in the most stretched position, hands together reaching overhead as high as possible.

(c) Single piece protective coveralls shall not be required to have an overlap of all layers as long as there is continuous full thermal protection.

(d) Fire departments that provide protective coats with protective resilient wristlets secured through a thumb opening may provide gloves of the gauntlet type for use with these protective coats. Fire departments that do not provide such wristlets attached to all protective coats shall provide gloves of the wristlet type for use with these protective coats.

~~((8))~~ Structural firefighting clothing.

(a) ~~All turnout clothing purchased after the effective date of these regulations shall meet the requirements of the 1991 edition of NFPA, Standard on Protective Clothing for Structural Firefighting 1971 or the 1997 edition of NFPA, Standard on Protective Ensemble for Structural Firefighting 1971. In no case, shall firefighters wear personal protective clothing manufactured prior to the 1986 edition, NFPA, Standard on Protective Clothing for Structural Firefighting 1971.~~

(b) Turnout clothing shall be maintained as specified by the manufacturer.

~~(e) Repairs to turnout clothing shall be done to the manufacturer's specification by qualified individuals approved by the manufacturer. Repairs must be made using materials and methods in accordance with the applicable standards under which the article was produced. Repairs include any and all alterations, modifications, additions, deletions or any other change made to the manufacturer's PPE article.~~

~~(d) Turnout clothing which is damaged or does not comply with this section shall not be used.~~

~~(e) All turnout clothing shall be inspected semi-annually by an individual qualified by the employer. Inspection intervals shall not exceed six months.)~~

#### NEW SECTION

**WAC 296-305-02002 Structural firefighting clothing (SFF).** (1) All SFF clothing purchased after January 1, 2014, shall meet the requirements of the 1991 edition of NFPA 1971, Standard on Protective Clothing for Structural Fire Fighting, or the 1997 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting. Firefighters shall not wear personal protective clothing manufactured prior to 1991, except for training purposes in nonhazardous areas.

(2) SFF clothing shall be maintained as specified by the manufacturer.

(3) Repairs to SFF clothing shall be done to the manufacturer's specification by qualified individuals approved by the manufacturer. Repairs must be made using materials and methods in accordance with the applicable standards under which the article was produced. Repairs include any and all alterations, modifications, additions, deletions or any other change made to the manufacturer's PPE article.

(4) SFF clothing which is damaged or doesn't comply with this section shall not be used.

(5) All SFF clothing shall be inspected semiannually by an individual qualified by the employer. Inspection intervals shall not exceed six months.

#### NEW SECTION

**WAC 296-305-02004 Protection ensemble for structural firefighting.** (1) Face and eye protection.

(a) Face and eye protection shall be provided for and used by firefighters engaged in fire suppression and other operations involving hazards to the eye and face at all times when the face isn't protected by the full facepiece of the SCBA. Primary face and eye protection appropriate for a given specific hazard shall be provided for, and used by, members exposed to that specific hazard. Such primary face and eye protection shall meet the requirements of the 2003 edition of ANSI Z87.1.

(b) Persons whose vision requires the use of corrective lenses in spectacles, and who are required by this standard to wear eye protection, shall wear goggles or spectacles of one of the following types:

- Spectacles with protective lenses that provide optical correction.
- Goggles that can be worn over corrective spectacles without disturbing the adjustment of the spectacles.

- Goggles that incorporate corrective lenses mounted behind the protective lens.

(c) When limitations or precautions are indicated by the manufacturer, they shall be transmitted to the user and care taken to see such limitations and precautions are strictly observed.

(d) Care, use and maintenance for any type of eye or face protection shall follow the manufacturer's suggested recommendations.

(e) Goggles shall be inspected, cleaned and disinfected prior to being reissued to other employees.

(f) Helmet face shields shall meet the requirements of the 2000 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

**Note:** The helmet face shield alone doesn't always provide adequate eye protection against flying particles, splash, gases and vapors. For known eye hazards, such as cutting with power saws, chopping, drilling and using extrication equipment, the face shield should be worn with additional eye protection.

(g) For firefighters that don't have a helmet face shield, flexible or cushioned fitting goggles shall be provided.

(h) Goggles shall consist of a wholly flexible frame, forming a lens holder or a rigid frame with integral lens or lenses, having a separate, cushioned fitting surface on the full periphery of the facial contact area.

(i) Materials used shall be chemical-resistant, nontoxic, nonirritating and slow burning.

(ii) There shall be a positive means of support on the face, such as an adjustable headband of suitable material or other appropriate means of support to retain the frame comfortably and snugly in front of the eyes.

(2) Hearing protection. Fire departments must address noise issues as required by chapter 296-817 WAC, Hearing loss prevention (noise).

**Note:** Although noise levels may exceed the 115 dBA ceiling limit for noise exposures during structural firefighting activities, hearing protection that will survive these conditions and not interfere with other essential PPE may not always be available. Fire departments must consider daily noise exposures and exposures to noise outside direct firefighting activities when selecting hearing protection and may use less protection during direct fire suppression when adequate hearing protection isn't technically feasible.

(3) Hand protection.

(a) Firefighters' gloves shall, when worn with turnout clothing, provide protection to the wrist area. In turnout clothing where wristlet protection isn't provided firefighters' gloves shall be tight-fitting at the top.

(b) Fire departments shall establish written policy and procedure for the care, use, cleaning, replacement or retirement criteria for gloves issued.

(c) Firefighters' gloves used during structural firefighting operations including rescue of victims from fires or emergency medical operations where sharp or rough surfaces are likely to be encountered shall meet the requirements of the 2000 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

**Notes:**

- Firefighters' gloves aren't designed to provide protection against all environments. For gloves needed to fulfill a specific requirement see that specific section of this chapter. It is the intent of this section to provide protection from intrusion

through the glove by certain chemicals and from bloodborne pathogens. Consult the glove manufacturers' recommendations.

- Firefighters' hands should be sized for compliance using the sizing chart specified in the 2000 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

(4) Body protection. Body protection shall be coordinated with torso, hand, head, foot, respiratory, and face protection as outlined in WAC 296-305-02001 through 296-305-02019 and 296-305-04001.

(5) Foot protection.

(a) Protective footwear purchased after January 1, 2014, shall comply with the 2007 or later edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

(b) Fire departments shall establish written policies and procedures on the use, maintenance, and retirement criteria for footwear in conjunction with the manufacturer's recommendations.

**Note:** Fire departments should establish cleaning and drying instructions for protective footwear, including applicable warnings regarding detergents, soaps, cleaning additives and bleaches.

(c) Firefighter footwear may be resoled, but upon resoling the footwear shall meet the requirements specified in this section.

(6) Head protection. Firefighters who engage in or are exposed to the hazards of structural firefighting shall be provided with and use helmets that meet, as a minimum, the requirements of the 1987 edition of NFPA 1972, Standard on Helmets for Structural Fire Fighting.

(a) Helmets purchased after January 1, 2014, shall comply with the 2007 or later edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

(b) Fire departments shall establish a written policy and procedure for the care, use, maintenance and retirement criteria for helmets, following the manufacturer's recommendations.

(c) Helmet accessories shall not interfere with the function of the helmet or its parts, and shall not degrade the helmet's performance.

(d) Firefighters shall follow the manufacturer's recommendations regarding inspection, cleaning, painting, marking, and storage of helmets.

## NEW SECTION

**WAC 296-305-02012 Body armor.** Fire departments that use protective body armor shall comply with the following:

(1) If the employer's PPE assessment required by WAC 296-800-16005 documents a need for body armor, the employer must provide the necessary equipment and ensure that:

(a) The body armor fits properly;

(b) Employees are trained in the use and limitations of the body armor; and

(c) The body armor is worn when necessary.

**Note:** Employees may exceed the minimum requirements for body armor if they choose.

(2) The fire department shall develop and have in place written guidelines for the care, use and maintenance of the protective body armor in conjunction with the manufacturer's recommendations.

(3) All protective body armor purchased prior to the effective date of this standard shall meet or exceed the April 1987 edition of National Institute of Justice NIJ 0101.03, threat level II requirements, or be demonstrated by the employer to be equally effective. All protective body armor purchased after the effective date of this standard must meet either the September 2000 edition of NIJ 0101.04, threat level II requirements or the June 2001 revision, NIJ 0101.04A. All body armor made of decertified materials as outlined in the 2005 edition of NIJ 0101.05 should be removed from service as soon as replacement body armor is available.

(4) Body armor shall be correctly fitted following the manufacturer's recommendations and shall not be used beyond the manufacturer's warranty.

**Note:** DOSH Directive 5.09, Body Armor as Personal Protective Equipment, can provide additional guidance regarding selection of body armor.

**AMENDATORY SECTION** (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-02017 Personal alert safety system (PASS) protection.** (1) Each firefighter (~~working in a hazardous area~~) engaged in structural firefighting requiring the use of SCBA shall wear and use a PASS device. PASS devices shall meet the requirements of the 1993 edition of NFPA 1982, Standard on Personal Alert Safety Systems (PASS) for Firefighters (1982, 1993 edition). (See WAC 296-305-07001 through ~~(296-305-07019)~~ 296-305-07018 for wildland firefighting application.)

**Note:** Fire departments should provide one spare PASS device for each ten units in service. If a department has less than ten devices they should have one spare.

(2) Each PASS device shall be tested routinely to ensure it is ready for use and immediately prior to each use, and shall be maintained in accordance with the manufacturers' instructions.

(3) Fire departments shall provide written procedures for the use of PASS devices.

(4) ~~((Compliance with this section shall occur no later than two years after the effective date of this chapter.~~

**Note:** Fire departments should provide one spare PASS device for each ten units in service. If a department has less than ten devices they should have one spare.

~~(5))~~ Fire departments shall establish a written procedure for the care, use, maintenance, and repair of PASS devices in conjunction with manufacturer's recommendations.

**AMENDATORY SECTION** (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-02019 Life safety ropes, harnesses, and hardware protection.** (1) All previously purchased life safety ropes, harnesses, and hardware used by fire departments shall meet the applicable requirements of the 2001 edi-

tion of NFPA 1983, Standard on ((Fire Service)) Life Safety Rope((~~Harness, and Hardware, 1990 edition~~)) and System Components. Ropes and equipment purchased after the effective date of this rule must meet the 2006 edition of NFPA 1983, Standard on Life Safety Rope and Equipment for Emergency Services.

(2) Ropes used to support the weight of members or other persons during rescue, firefighting, other emergency operations, or during training evolutions shall be life safety rope.

(3) Life safety rope used for rescue at fires, or other emergency incidents, or for training, shall be permitted to be reused if inspected before, and after, each such use in accordance with the manufacturer's instructions and provided:

(a) The rope has not been visually damaged by the exposure to heat, direct flame impingement, chemical exposure, or abrasion.

(b) The rope has not been subjected to any impact load.

(c) The rope has not been exposed to chemical liquids, solids, gases, mists, or vapors of any materials, known to deteriorate rope.

(d) If the rope used for rescue at fires or other emergency incidents, or for training, has been subjected to (a), (b), or (c) of this section, or fails the visual inspection, it shall be destroyed after such use.

(e) If there is any question regarding the serviceability of the rope after consideration of the above, the safe course of action shall be taken and the rope shall be placed out of service. See Appendix B.

(f) Rope inspection shall be conducted by qualified inspectors in accordance with rope inspection procedures established and recommended as adequate by the rope manufacturer to assure rope is suitable for reuse.

(4) Fire departments shall establish written procedures for the use of life safety ropes and rescue operations utilizing harnesses and ropes.

(5) Records shall provide a history of each life safety and training rope. The minimum information to be reflected in the record of history of life safety and training ropes shall include: Date of manufacturer, organization serial number, date of use ((list to include)), type of use, date of inspection, inspectors name and space for comments.

~~(6) ((Rope used for training evolutions shall be designated as training rope and shall be permitted to be reused if inspected before and after each use in accordance with the manufacturer's instructions.~~

~~(7))~~ The destruction of a rope means that it shall be removed from service and altered in such a manner that it could not be mistakenly used as a life safety rope. This includes disposal or removal of labels and cutting into short lengths to be used for utility purposes.

~~((8))~~ (7) All repairs to life safety harnesses shall be done by an authorized manufacturer's representative, or the manufacturer.

(Note: See WAC 296-305-06003 (3), (4), (5), and (6) for the testing of life belts, ropes, and harnesses.

~~(9) Class I safety harnesses)~~ (8) At a minimum, ladder belts shall be used for firefighter attachment to ladders and aerial devices.

~~((10))~~ (9) Class II and Class III life safety harnesses shall be utilized for fall arrest and rappelling operations. Class III harnesses shall be used when the potential to become inverted exists.

~~((11) Rescue)~~ (10) Life safety ropes shall be padded when deployed over edges or rough surfaces.

**Note:** See WAC ~~((296-305-05005))~~ 296-305-05113 for rope rescue applications.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

**WAC 296-305-02501 Emergency medical protection.**

(1) Firefighters who perform emergency medical care or otherwise may be exposed to blood or other body fluids shall be provided with emergency medical face protection devices, and emergency medical garments that meet the applicable requirements of ~~((NAPA))~~ the 1999 edition of NFPA 1999, Standard on Protective Clothing for Emergency Medical Operations ((1999, 1992 edition)).

**Note:** Prior to purchase, fire departments should request the technical data package required in the 2003 edition of NAPA 1999, ((1992 edition,)) in order to compare glove and garment performance data. Departments reviewing these packages should ensure a relative ranking of the performance data before they purchase in order to provide the best performance of the EMS personal protective clothing.

(2) Firefighters shall don emergency medical gloves and eye protection prior to initiating any emergency patient care.

(3) Firefighters shall don emergency medical garments ~~((and emergency medical face protection devices))~~ prior to any patient care during which splashes of body fluids can occur such as situations involving spurting blood or childbirth.

**Note:** Firefighter turnout gear and gloves with vapor barriers may be used in lieu of emergency medical gloves and garments.

(4) Contaminated emergency medical garments, emergency medical face and eye protection, gloves, devices, and emergency medical gloves shall be cleaned and disinfected, or disposed of, in accordance with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.

(5) Fire departments shall establish a designated infection (exposure) control officer who shall ensure that an adequate infection control plan is developed and all personnel are trained and supervised on the plan.

(6) The infection control officer shall be responsible for establishing personnel exposure protocols so that a process for dealing with exposures is in writing and available to all personnel.

(7) The infection control officer or his/her designee will function as a liaison between area hospitals and fire department members to provide notification that a communicable disease exposure is suspected or has been determined by hospital medical personnel. The department infection control officer will institute the established exposure protocols immediately after report of an exposure. The infection control officer shall follow the confidentiality requirements of chapter 246-100 WAC and the medical protocol requirements of chapter 296-802 WAC.

(8) Fire departments shall have a written infection ~~((exposure))~~ control plan which clearly explains the intent, benefits, and purpose of the plan. The written document must cover the standards of exposure control such as establishing the infection control officer and all members affected; education and training; ~~((HB- vaccination requirements;))~~ documentation and record keeping; cleaning/disinfection of personnel and equipment; and exposure protocols.

(9) Policy statements and standard operating procedure guidelines shall provide general guidance and specific regulation of daily activities. Procedures shall include delegation of specific roles and responsibilities, such as regulation of infection control, as well as procedural guidelines for all required tasks and functions.

(10) Fire departments shall establish a records system for members health and training.

(11) Firefighters shall be trained in the proper use of P.E., exposure protection, post exposure protocols, disease modes of transmission as it related to infectious diseases.

(12) Infectious disease programs shall have a process for monitoring firefighters compliance with established guidelines and a means for correcting noncompliance.

(13) Fire department members shall be required to annually review the infectious disease plan, updates, protocols, and equipment used in the program.

(14) Fire departments shall comply with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens, in its entirety.

(15) Tuberculosis (TB) exposure and respiratory protection requirements.

(a) Firefighters shall wear a particulate respirator (PR) when entering areas occupied by individuals with suspected or confirmed TB, when performing high risk procedures on such individuals or when transporting individuals with suspected or confirmed TB in a closed vehicle.

(b) A NIOSH-approved, 95% efficient particulate air respirator is the minimum acceptable level of respiratory protection.

(i) Fit tests are required.

(ii) Fit tests shall be done in accordance with chapter 296-842 WAC.

(c) Employee tuberculosis screening shall be provided in accordance with current U.S. Centers for Disease Control and Prevention guidelines.

~~((Note 1: Emergency response personnel should be routinely screened for tuberculosis at regular intervals. The tuberculin skin test is the only method currently available that demonstrates infection with Mycobacterium tuberculosis (M. tuberculosis) in the absence of active tuberculosis.))~~

**Note ((2)):** If possible, the rear windows of a vehicle transporting patients with confirmed, suspected, or active tuberculosis should be kept open, and the heater or air conditioner set on a noncirculating cycle.

~~((Additional References:~~

~~Chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.~~

~~WAC 296-62-08001(3), Exposure Control.))~~

NEW SECTION

**WAC 296-305-03002 Hazardous materials.** (1) Fire department personnel involved in hazardous materials incidents shall be protected against potential chemical hazards. Chemical protective clothing shall be selected according to the technical data package provided by the clothing manufacturer and used to protect the skin, eyes, face, hands, feet, head and body.

(2) Fire departments must select, provide, and require the use of additional personal protective equipment as required in chapter 296-842 WAC, Respiratory protection.

(3) Hazardous chemical protective equipment shall be classified by performance and is defined as:

(a) Vapor-protective suits (level A) meeting the criteria outlined in the 2000 edition of NFPA 1991, Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies.

(b) Liquid splash-protective suits (level B) meeting the criteria outlined in the 2000 edition of NFPA 1992, Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies.

(c) CBRN terrorism incident protective ensembles and ensemble elements meeting the criteria outlined in the 2001 edition of NFPA 1994, Standard on Protective Ensembles for First Responders to CBRN Terrorism Incidents.

(4) Vapor protective ensembles, liquid splash-protective ensembles, and CBRN protective ensembles shall completely cover both the wearer and the wearer's respiratory protection unless the respiratory protection has been specifically designed by the manufacturer for that type of chemical exposure.

(5) Vapor protective suits and liquid splash-protective suits shall not be used alone for any firefighting applications or for protection from radiological, biological, or cryogenic agents or in flammable or explosive atmospheres.

(6) Liquid splash-protective suits shall not be used when operations are likely to result in significant exposure to chemicals or specific chemical mixtures with known or suspected carcinogenicity as indicated by any one of the following documents if it can be reasonably expected that the firefighters in vapor-protective suits would be significantly better protected:

(a) Dangerous Properties of Industrial Chemicals, 10th edition-2000, N. Irving Sax.

(b) NIOSH Pocket Guide to Chemical Hazards, 2006 edition.

(c) U.S. Coast Guard Chemical Hazard Response Information System (CHRIS), Volume 13, Hazardous Chemical Data.

(7) Liquid splash-protective suits shall not be used when operations are likely to result in significant exposure to chemicals or specific chemical mixtures with skin toxicity notations as indicated by the American Conference of Government Industrial Hygienists (ACGIH) Threshold Limit Values for Chemical Substances and Agents and Biological Exposure Indices for 2004 or 2007 if it can be reasonably expected that firefighters in vapor-protective suits would be significantly better protected.

(8) Firefighters assigned to functional support operations outside the hot zone during hazardous chemical emergencies

shall be provided with and shall use personal protective garments appropriate for the type of potential chemical hazard exposure.

(9) Fire departments responding to uncontrolled release of hazardous materials must comply with chapter 296-824 WAC, Emergency response.

AMENDATORY SECTION (Amending WSR 05-20-055, filed 10/3/05, effective 12/1/05)

**WAC 296-305-04001 Respiratory equipment protection.** (1) Firefighter's self-contained breathing apparatus (SCBA) shall(~~:~~

~~(a) Be pressure demand type (positive pressure);~~

~~(b) Operate in the positive pressure mode only;~~

~~(c) Have a minimum of thirty minutes service duration;~~

~~(d) Be NIOSH certified; and~~

~~(e) Meet the requirements of the 1992 or 1997 edition of NFPA, Standard on Open-Circuit Self-Contained Breathing Apparatus for Firefighters 1981), at a minimum, meet the requirements of the 1997 edition of NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters. Equipment purchased after the effective date of this rule must meet the 2007 edition of NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Emergency Services.~~

(2) Closed circuit SCBA shall:

(a) Be positive pressure;

(b) Be NIOSH certified; and

(c) Have a minimum thirty-minute service duration.

(3) Members using SCBA's shall operate in teams of two or more.

(4) Except as otherwise provided in this chapter, fire departments shall adopt, maintain and implement a written respiratory protection program that addresses the requirements of chapter 296-842 WAC, (~~Respirators and Part I-1, Asbestos, Tremolite, Anthophyllite, and Actinolite~~) Respiratory protection. This includes program administration, medical limitations, equipment limitations, equipment selection, inspection, use, maintenance, training, fit testing procedures, air quality, and program evaluation.

**Note:** Additional information on respirators and respirator usage can be found in ANSI Z88.2 - American National Standard for Respiratory Protection(~~(ANSI Z88.5 - Practices for Respiratory Protection for Fire Service)~~) and various NFPA publications (1981, 1404, 1500, etc.)(~~and the Washington State Fire Service Training Program for respiratory training and usage~~).

~~(5) (When fire departments purchase compressed breathing air from a vendor, the fire department shall require the vendor to provide certification and documentation of breathing air quality as specified in subsection (21) of this section and in chapter 296-842 WAC.) Reserved.~~

(6) When the fire department makes its own breathing air or uses vendor (~~purchased~~) supplied breathing air, (~~the air quality from compressors, cascade systems cylinders,~~) they shall (~~be tested at least quarterly as specified in subsection (21) of this section~~) maintain documentation certifying breathing air quality. The breathing air shall:

(a) Be tested at least quarterly by using an air sample taken from the same outlet and in the same manner as the res-

pirator breathing air cylinders are filled or air line respirators are connected.

(b) Meet the requirements of either the 2003 edition of NFPA 1989, Standard on Breathing Air Quality for Fire and Emergency Services Respiratory Protection or the 1997 edition of ANSI/CGA G6-1 - Commodity Specification for Air, with a minimum air quality of grade D.

(c) Meet a water vapor level of 24 ppm or less.

(7) Fit testing shall be conducted in accordance with this section and chapter 296-842 WAC, ~~((Respirators))~~ Respiratory protection.

(a) Each new member shall be tested by a qualitative or quantitative method before being permitted to use SCBA's in a hazardous atmosphere.

(b) Only firefighters with a properly fitting facepiece shall be permitted by the fire department to function in a hazardous atmosphere with SCBA. ~~((Reference WAC 296-842-18005.))~~

(c) Fit testing shall be repeated:

(i) At least once every twelve months.

(ii) Whenever there are changes in the type of SCBA or facepiece used.

(iii) Whenever there are significant physical changes in the user. Example: Weight change of ten percent or more, scarring of face seal area, dental changes, cosmetic surgery, or any other condition that may affect the fit of the facepiece seal.

(d) The fit testing is done only in a negative-pressure mode. If the facepiece is modified for fit testing, the modification shall not affect the normal fit of the device. Such modified devices shall only be used for fit testing.

(e) The fit test procedures and test exercises described in ~~((WAC 296-62-07162, Asbestos, Appendix C,))~~ WAC 296-842-15005 and 296-842-22010 shall be followed unless stated otherwise in this chapter.

(f) Respirator fit test records shall include:

(i) Written guidelines for the respirator fit testing program including pass/fail criteria;

(ii) Type of respirator tested including manufacturer, model, and size;

(iii) Type of fit test and instrumentation or equipment used;

(iv) Name or identification of test operator;

(v) Name of person tested;

(vi) Date of test; and

(vii) Results of test.

**Note:** Firefighters should be issued individual facepieces.

(8) Facial hair, contact lenses, and eye and face protective devices.

(a) A negative pressure respirator, any self-contained breathing apparatus, or any respirator which is used in an atmosphere immediately dangerous to life or health (IDLH) equipped with a facepiece shall not be worn if facial hair comes between the sealing periphery of the facepiece and the face or if facial hair interferes with the valve function.

(b) The wearer of a respirator shall not be allowed to wear contact lenses if the risk of eye damage is increased by their use.

(c) If ~~((a spectacle, goggle, or face shield))~~ corrective lenses must be worn with a facepiece, ~~((#))~~ they shall be worn so as to not adversely affect the seal of the facepiece to the face. See WAC ~~((296-62-07170(2)))~~ 296-842-18005(3).

(d) Straps or temple bars shall not pass between the seal or surface of the respirator and the user's face.

(9) At the end of suppression activities (to include fire overhaul) and before returning to quarters:

~~((Firefighters shall be decontaminated prior to removal of respirators))~~ Gross/field decontamination shall be performed on firefighters prior to removal of their respirator whenever firefighting activities resulted in exposure to a hazardous substance.

(b) When exchanging air supply bottles during suppression or overhaul activities, reasonable precautions shall be taken to maintain uncontaminated atmosphere to the breathing zone and facepiece supply hose.

(10) Self-contained respiratory equipment shall be available and used by all firefighters who enter into hazardous atmospheres during structural firefighting activities.

~~((Positive pressure air line respirators may be used only for atmospheres other than IDLH and must be equipped with a five minute minimum capacity positive pressure escape bottle.))~~

~~((a) If the service life of the auxiliary air supply is fifteen minutes or less it shall not be used for entry into an IDLH atmosphere but it may be used for escape purposes. The auxiliary air supply may be used for entry into an IDLH atmosphere only when the service life of the unit exceeds fifteen minutes and when not more than twenty percent of the noted air supply will be used during entry.))~~

~~((b) The maximum length of hose for supplied air respirators is 300 feet (91 meters). Such hose shall be heavy duty nonkinking and NIOSH approved.))~~ Reserved.

(12) Respirators shall be provided for, and shall be used by, all personnel working in areas where:

(a) The atmosphere is hazardous;

(b) The atmosphere is suspected of being hazardous; or

(c) The atmosphere may rapidly become hazardous(~~(#)~~),

**Reference:** See WAC 296-305-05002(13) for additional requirements.

~~((Anytime firefighters are working inside a confined space, such persons shall be provided with SCBA or air line respirator with escape bottle, and shall use the equipment unless the safety of the atmosphere can be established by testing and continuous monitoring.))~~ Reserved.

(14) Firefighters using a properly functioning SCBA shall not compromise the protective integrity of the SCBA by removing the facepiece for any reason in hazardous atmospheres or in atmospheres where the quality of air is unknown.

(15) Firefighters shall receive training for each type and manufacturer of respiratory equipment available for their use, the step-by-step procedure for donning the respirator and checking it for proper function. Required training shall include:

(a) Recognizing hazards that may be encountered;

(b) Understanding the components of the respirator;

(c) Understanding the safety features and limitations of the respirator; and

(d) Donning and doffing the respirator.

(16) After completing such training, each firefighter shall practice at least quarterly, for each type and manufacture of respirator available for use, the step-by-step procedure for donning the respirator and checking it for proper function.

(17) Members shall be tested at least annually on the knowledge of respiratory protection equipment operation, safety, organizational policies and procedures, and facepiece seals, to the fire department's standard. Such records shall remain part of the member training file.

(18) Members shall be allowed to use only the make, model, and size respirator for which they have passed a fit test within the last twelve months.

(19) In cases where there is a reported failure of a respirator, it shall be removed from service, tagged and recorded as such, and tested before being returned to service.

(20) Firefighters shall be thoroughly trained in accordance with the manufacturer's instructions on emergency procedures such as use of regulator bypass valve, corrective action for facepiece and breathing tube damage, and breathing directly from the regulator (where applicable).

(21) ~~((Compressed gaseous breathing air in the SCBA cylinder shall meet the requirements of ANSI/CGA G7.1-Commodity Specification for Air, with a minimum air quality of grade D, as well as meeting a water vapor level of 24 ppm or less.))~~ Reserved.

(22) SCBA cylinders shall be hydrostatically tested within the periods specified by the manufacturer and the applicable governmental agencies.

~~((Additional reference: Chapter 296-842 WAC.))~~

AMENDATORY SECTION (Amending WSR 05-17-059, filed 8/10/05, effective 10/1/05)

**WAC 296-305-04501 Automotive fire apparatus design and construction.** (1) All new fire apparatus with the exception of specialized equipment, shall conform to the following minimum safety standards contained in ~~((NFPA Booklets No. 1901, 1902, 1903, 1904, and other 1900's))~~ the 2009 edition of NFPA 1901, Standard for Automotive Fire Apparatus, or the 2006 Edition of NFPA 1906, Standard for Wildland Fire Apparatus.

(2) Used fire apparatus, purchased after ((December 17, 1977)) the effective date of this rule, weighing 10,000 pounds or more shall conform with the following U.S. Department of Transportation standards, when applicable:

(a) 49 C.F.R. Ch. V ~~((40-93))~~ 10-03 edition) 571.121 "Air brake systems";

(b) 49 C.F.R. Ch. V ~~((40-93))~~ 10-03 edition) 571.106 ~~((Hydraulic))~~ Brake hoses";

(c) 49 C.F.R. Ch. V ~~((40-93))~~ 10-03 edition) ~~((571-2H))~~ 571-103 "Hydraulic brake ((hoses)) systems."

(3) Employers acquiring used apparatus or used equipment shall not be required to bring it under a more stringent code than the one in force at the time the apparatus was manufactured. However, such vehicle must meet applicable U.S. Department of Transportation standards and chapter 296-865 WAC, Motor vehicles.

(4) Fire apparatus tailboards and steps shall have a non-skid rough surface.

(5) Exhaust systems shall be installed and maintained in proper condition, and shall be so designed as to minimize the exposure of the firefighter to the exhaust gases and fumes.

(6) Spinner knobs shall not be attached to the steering handwheel of fire apparatus.

(7) The transmission shifting pattern of the apparatus shall be clearly stenciled or labeled and posted so it can be clearly read by the driver while operating the apparatus.

(8) The height of any apparatus, over seven feet in height from the ground to the top of the beacon or highest point of the apparatus, shall be clearly labeled in a place where it can be easily and clearly read by the driver while operating the apparatus.

(9) All apparatus in excess of 10,000 pounds loaded weight, shall have the weight of the vehicle in pounds and tons clearly labeled in a place where it can be easily and clearly read by the driver while operating the apparatus.

(10) All hoses and equipment shall be secured to prevent unintentional or inadvertent deployment.

(11) Fire departments that purchase nonmotorized equipment to be used in emergency response situations on all roadways must comply with Title 46 RCW, Motor vehicles.

AMENDATORY SECTION (Amending WSR 99-05-080, filed 2/17/99, effective 6/1/99)

**WAC 296-305-04503 Automotive fire apparatus equipment.** (1) Vehicles used to transport firefighters and employer representatives shall have compartments for carrying sharp tools, saws, chisels, axes, etc., or if carried on the outside of the apparatus, equipment with sharp points and edges shall be covered to prevent injury to firefighters and employer representatives.

(2) Personnel restraints for traveling.

(a) All persons riding on fire apparatus shall be seated and secured to the vehicle by ~~((seatbelts))~~ seat belts or safety harnesses at any time the vehicle is in motion.

(b) ~~((Seatbelts))~~ Seat belts shall comply with U.S. Department of Transportation Part 49 C.F.R. Section 571, Standards 209 and 210.

(c) Riding on tailsteps or in any other exposed position such as sidesteps or running boards shall be specifically prohibited.

(d) Standing while riding shall be specifically prohibited.

(e) Members actively performing necessary emergency medical care while the vehicle is in motion shall be restrained to the extent consistent with the effective provision of such emergency medical care. All other persons in the vehicle shall be seated and belted in approved seating positions while the vehicle is in motion.

(f) Fire departments permitting hose loading operations while the vehicle is in motion shall develop a written policy and guidelines addressing all safety aspects.

**Note:** Policy and operating guidelines should address:

- The assigning of a member as a safety observer who should have an unobstructed view of the hose loading operation and be in visual and voice contact with the driver.
- Allowed maximum fire apparatus speed when hose loading;
- Control of nonfire department vehicular traffic; and
- Allowing members in the hose bed, but limit standing to only when the vehicle is not moving.

**Note:** See WAC ((296-305-0701)) 296-305-0701(3) for exceptions for wildland vehicles.

(3) Each fire apparatus shall carry a current U.S. Department of Transportation ((~~chemical identification book or the equivalent~~)) Emergency Response Guidebook.

(4) Ladders stowed on the sides of apparatus, which protrude past the tailboard, shall have guards over the protruding ends.

(5) No employer shall permit automotive fire apparatus equipment which has an obstructed view to the rear, to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level.

**AMENDATORY SECTION** (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-04505 Automotive apparatus operational rules.** (1) Each employer of staffed fire apparatus shall establish a written policy and procedure whereby the apparatus has a scheduled daily operational check. Each employer of unstaffed fire apparatus shall establish a schedule appropriate to that department's activities.

(2) Any item found to be in need of repair shall be reported immediately to the officer in charge or other appropriate person.

(3) Firefighting apparatus shall be brought to a full stop before employees are allowed to step from the apparatus.

(4) Firefighters shall not be in the apparatus hose bed while hose is being run out from the bed.

(5) Headlights shall be on at all times when any fire or emergency vehicle is responding to a call.

(6) All apparatus over 20,000 pounds (gross vehicle weight) shall utilize wheel ((~~blocks~~)) chocks, rated for the specific apparatus they are being used with, when parked at an emergency scene.

(7) Apparatus responding to alarms shall meet specifications in RCW 46.61.035, relating to operations of authorized emergency vehicles.

(8) All operators of emergency vehicles shall be trained in the operations of apparatus before they are designated as drivers of such apparatus. The training program shall be established by each fire department. Once trained, all operators shall familiarize themselves with any apparatus prior to operating such apparatus even for brief periods of time.

Additional Reference: Washington ((~~State Fire Protection Bureau~~)) Fire Chiefs - Emergency Vehicle ((~~Accident~~) Incident Prevention ((~~EVAP~~)) EVIP program or other Washington state accredited program.

**AMENDATORY SECTION** (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-04507 Fire apparatus maintenance and repair.** (1) If at any time a fire apparatus is found to be in an unsafe condition, it shall be reported immediately to the officer on duty.

(2) If in the driver or duty officer's determination, the apparatus cannot be used in a safe manner, it shall be taken

out of service until it has been restored to a safe operating condition.

(3) All repairs ((~~and preventive maintenance to fire apparatus shall only be made by personnel deemed qualified by the registered owners of the fire apparatus~~)) to the suppression components of emergency vehicles of the fire department shall be done by an emergency vehicle technician, ASE certified technician or factory qualified individual. Repairs, maintenance or routine work to nonsuppression systems of suppression apparatus or other fire department vehicles and their equipment shall be done by personnel qualified in the specific area of repair. Fire service pumps with a capacity of 499 gallons per minute or less and not used for interior structural firefighting operations are exempt from this requirement.

(a) A preventive maintenance program shall be instituted and records maintained for each individual apparatus in order to record and track potential or on-going problems.

(b) ((~~A minimum annual service test of apparatus shall be made according to NFPA guidelines relating to pumper apparatus.~~

~~(c) Failure of any portion of the annual service test shall constitute the apparatus to be placed out of service as a pumper until adequate repairs are made and the apparatus successfully completes said tests.)) Apparatus shall be maintained and tested in accordance with the manufacturer's recommendations.~~

**Note:** Additional information can be found in the 2007 edition of NFPA 1911, Standard for the Inspection, Maintenance, Testing and Retirement of In-service Automotive Fire Apparatus. Qualifications for persons working on emergency response vehicles can be found in the 2000 edition of NFPA 1071, Standard for Emergency Vehicle Technician Professional Qualification, A.1.1 and A.2.1.

#### NEW SECTION

**WAC 296-305-04510 Aerial apparatus.** (1) All new aerial devices shall be constructed and initially tested in accordance with the 2009 edition of NFPA 1901, Standard for Automotive Apparatus.

(2) All aerial devices shall be operated in accordance with the manufacturer's recommendations.

(3) All aerial devices shall be maintained, tested and repaired in accordance with the manufacturer's instructions and nonconflicting portions of the 2002 edition of NFPA 1911, Standard for the Inspection, Maintenance, Testing and Retirement of In-Service Automotive Fire Apparatus.

(a) All devices, as well as the section of the apparatus which supports the turntable, shall be inspected at least once every year.

(b) All devices, as well as the section of the apparatus which supports the turntable, shall be nondestructively tested by a certified testing agency every five years.

(c) After any accident that causes structural damage, testing shall be performed and all defects corrected before the apparatus is returned to service.

(4) Aerial devices shall be used according to the following requirements:

(a) The number of firefighters permitted on aerial devices shall be in accordance with the manufacturer's instructions.

(b) Aerial devices shall not be positioned under dangerous cornices or other loose overhanging objects that may endanger firefighters and personnel working from or climbing the ladders, except where rescue operations are essential.

(c) When working near energized electrical lines, the following minimum working clearances for all equipment and personnel shall be observed:

(i) For lines rated 50 kv or below, the minimum clearance between the lines and any part of the equipment shall be ten feet.

(ii) For lines rated over 50 kv, the minimum clearance shall be ten feet plus 0.4 inch (1 cm) for each 1 kv.

(iii) For low voltage lines (operating at 600 volts or less), the work shall be performed in a manner to prevent the firefighters or equipment from contacting the energized conductor.

(d) Fire apparatus aerial devices shall be positioned for the greatest stability feasible at the fire scene.

(e) The tip of the aerial device shall not be forcefully extended against a solid structure.

**Note:** If allowed by manufacturer's recommendations, aerial devices may be utilized for ventilation in accordance with those recommendations.

(f) Aerial ladders shall not be extended or retracted while firefighters are climbing the ladder.

(g) Locking in shall not be permitted. If it is necessary for firefighters to be positioned on the aerial device, they shall be secured by at least a ladder belt.

(h) Ladder pipes, when in use, shall be secured to the aerial in such a manner so that the ladder pipe cannot accidentally be dislodged while in operation.

(i) The operator of an aerial device shall remain on the turntable whenever firefighters are working from the aerial. If the aerial device is used only as a ground ladder, no operator is needed on the turntable.

(5) The following shall regulate the design and use of the operating turntable and aerial device:

(a) Ladders shall have nonskid protection on the rungs.

(b) Turntable controls and valves for rotating, extending or elevating the aerial device shall be clearly and distinctly marked as to function.

(c) Aerial controls shall be spring loaded and have a safety catch so that the controls shall return to the neutral position if the operator is incapacitated.

(d) The operator of the aerial device shall be provided with a nonskid surface on the turntable.

(e) A railing of approximately forty-four inches in height, and if possible, not less than thirty-six inches in length, shall be installed on the turntable in back of the operator's position.

(f) A spotlight of not less than 75,000 candlepower (950,000 lumens) or a floodlight with not less than 850 cp (10,500 lumens) shall be provided at the base to illuminate the aerial device at night in any position of operation.

(6) The following shall regulate the communication systems on the aerial devices and on the automotive fire apparatus:

(a) A two-way voice communication system shall be installed between the top fly of the ladder or platform and the lower control station.

(b) There shall be some type of electrical signal or voice communication located in the tractor of tillered aerial for communication signals between the tillerman and driver. The apparatus shall not be moved unless the proper signal, as shown in Appendix E, is received from the tillerman.

(7) The automotive fire apparatus used in conjunction with aerial devices shall be used according to the following:

(a) Ground jacks or outriggers shall be deployed before an aerial device is put into operation.

(b) Ground plates shall be deployed under the outriggers or jacks at all times.

(c) Hand, airbrakes, and spring brakes shall be set whenever an aerial device is in operation.

(d) In addition to ground jack supports and outriggers, wheel chocks shall be used whenever the aerial device is in operation.

(e) Wheel chocks shall be rated by the manufacturer of the chock for the apparatus it is to be used on.

(f) Sand or similar products shall be put under jacks, outriggers, and ground plates when operating on ice or snow.

(8) Railings on elevated platforms shall be constructed so that there is no opening greater than twenty-four inches below them.

(9) A plate shall be located at the aerial device control units, clearly visible to the operator at the lower control position, listing the following information:

(a) Model and serial number of the manufacturer.

(b) Rated capacity of the platform.

(c) Operating pressure of the hydraulic and pneumatic systems.

(d) Cautions or restrictions of operation.

(e) Control instructions.

#### NEW SECTION

**WAC 296-305-05000 Incident management.** (1) The fire department shall establish an incident management system (IMS) consistent with the U.S. Department of Homeland Security National Incident Management System (NIMS) with written guidelines applying to all members involved in emergency operations.

(a) All members involved in emergency operations shall be trained in the IMS system.

(b) Personnel shall be trained and qualified by their department in the incident command system (ICS) that meets the requirements of NIMS prior to taking a role at an emergency scene.

(c) The incident management system shall be applied to drills, exercises, and other situations that involve hazards similar to those encountered at actual emergency incidents and to simulated incidents that are conducted for training and familiarization purposes.

(2) At all emergency incidents, the incident commander shall be responsible for the overall safety of all members and all activities occurring at the scene.

(3) All emergency incidents shall be managed by an ICS; the incident commander shall establish an organization with

sufficient supervisory personnel to control the position and function of all members operating at the scene and to ensure that safety requirements are satisfied.

(4) At all emergency incidents, the incident commander shall have the responsibility to:

(a) Assume and confirm command and take an effective fixed physical command position.

(b) Perform situation evaluation that includes risk assessment.

(c) Initiate, maintain, and control incident communication.

(d) Develop an overall strategy and incident action plan.

(e) Develop an effective ICS organization by managing resources, maintaining an effective span of control, and maintaining direct supervision over the entire incident by creating geographical and/or functional area supervisors as appropriate for the scope and size of the incident.

(f) Review, evaluate, and revise the incident action plan as required.

(g) Continue, transfer, and terminate command.

(5) The fire department shall develop a risk management policy including rules of engagement that can be used by the incident commander in the development of incident strategies. The risk management policy should include direction and guidance to the incident commander in formulating incident planning relating to the level of risk that may be undertaken in any given incident to save lives and property in as safe a manner as dictated by the situation.

(6) The fire department shall establish an accountability system: Written procedures and guidelines for tracking all members operating at emergency incidents.

(7) The incident commander shall provide for control of access to hazardous areas of the incident scene. Procedures shall identify methods for identification of hazardous areas and communication of necessary protective equipment and other protective measures necessary to operate in the hazardous area.

(a) Control zones shall be established at emergency incidents.

(b) The perimeters of the control zones shall be designated by the incident commander and communicated to all members.

(c) If the perimeters of the control zones change during the course of the incident, these changes shall be communicated to all members on the scene.

(d) Hazard control zones shall be designated as hot, warm, cold and exclusion zones.

(e) All members shall wear the PPE (SCBA, flash hood, etc.) appropriate for the risks that might be encountered while in the hot zone.

(f) All members operating within the hot zone shall have an assigned task.

(g) No unauthorized personnel shall enter an exclusion zone that was designated due to the presence of imminent hazard(s) or the need to protect evidence.

(8) Firefighters operating in a hot zone shall operate in teams of two or more regardless of rank or assignment. Members of these teams shall be in constant communication with each other through touch, visual, or voice means in order to provide assistance in case of emergency.

(9) The fire department shall provide personnel for the rescue of members operating at emergency incidents as the need arises.

(10) The fire department shall develop and maintain written guidelines for the safety of members at incidents that involve violence, unrest, or civil disturbance. Such situations may include, but not be limited to, riots, fights, violent crimes, drug related situations, family disturbances, deranged individuals, and people interfering with fire department operations.

(11) When members are operating at an emergency incident and their assignment places them in potential conflict with motor vehicle traffic, all reasonable efforts shall be made to protect the members.

**Note:** Chapters 6H and 6I of the Manual on Uniform Traffic Control Devices, 2003 edition revision 1, provides information on how to set up traffic control zones during emergency operations on different types of roadways. This information can be accessed for free at the following link: <http://mutcd.fhwa.dot.gov/pdfs/2003r1/pdf-index.htm>.

(12) Responders shall not manipulate equipment that they have not been trained or equipped to use.

(13) In the event a firefighter becomes lost, trapped, seriously injured, has a medical emergency, has exhausted their breathing air, or finds themselves in any other form of life threatening situation they shall immediately call for help, using the nationally adopted term "Mayday" to declare that an emergency situation now exists. The fire department shall specifically establish and routinely practice standard procedures for managing a Mayday situation.

(14) Emergency scene communications.

(a) Incident radio communication shall use clear text terminology.

(b) Incident communication shall use the phrase "emergency traffic" as the standard alert for all units operating on the scene to clear the air.

(c) The fire department shall specifically establish and routinely practice standard procedures for managing an "emergency traffic" situation.

**Note:** The fire department communication center should start an incident clock when the first arriving unit is on scene of a working structure fire or when conditions appear to be time sensitive or dangerous. The dispatch center should notify the incident commander, at an interval established by their policy or procedure, until incident stabilization is achieved.

#### NEW SECTION

**WAC 296-305-05002 Fire suppression.** (1) Before beginning interior structural firefighting operations, the incident commander must evaluate the situation and risks to operating teams.

(2) The "initial stages" of an incident shall encompass the tasks undertaken by the first arriving company with only one crew assigned or operating in the hot zone.

(3) In the initial stages of an incident where only one crew is operating in the hot zone at a working structural fire, a minimum of four individuals shall be required, consisting of two individuals working as a crew in the hot zone and two individuals present outside the hot zone available for assis-

tance or rescue of firefighters during emergency operations where entry into the hot zone is required.

(4) Initial attack operations shall be organized to ensure that if, on arrival at the emergency scene, responders find a known rescue situation where immediate action could prevent the loss of life or serious injury, such action shall only be permitted when no less than three personnel (2-in/1-out) are present and equipped to provide emergency assistance or rescue of the team entering the hot zone.

No exception shall be allowed when there is no possibility to save lives or no "known" viable victims.

(5) Firefighters must not engage in interior structural firefighting in the absence of at least two standby firefighters (2-in/2-out) except as provided in WAC 296-305-05002(4).

(6) Standby team members shall comply with the following:

(a) Members shall remain aware of the status of firefighters in the hot zone.

(b) Members shall remain in positive communication (radio, visual, voice or signal line) with the entry team, in full protective clothing with respiratory protection donned while in standby mode.

(c) Only one standby team member may be permitted to perform other duties outside the hot zone, provided constant communication is maintained with the team in the hot zone, and provided that those duties will not interfere with his or her ability to initiate a rescue as appropriate.

(d) No standby team members shall be permitted to serve as a standby member of the firefighting crew when the other activities in which the firefighter is engaged inhibit the firefighter's ability to assist in or perform firefighter rescue or are of such importance that they cannot be abandoned without placing other firefighters in danger.

**Note:** Nothing in this section shall prevent actions which may reasonably be taken by members first on the scene to determine the nature and extent of fire involvement.

(7) Once a second crew arrives at the hot zone, the incident shall no longer be considered to be in the "initial stage," and at least one rapid intervention crew should be assigned. For further guidance, see nonmandatory Appendix D.

(8) Teams in the hot zone shall have positive communication capabilities with the incident command structure in place. Incident radio communication capabilities within the incident management structure shall include monitoring the incident-assigned frequencies (including mutual aid radio frequencies).

(9) Officers at emergency scenes shall maintain an awareness of the physical and mental condition of members operating within their span of control and ensure that adequate steps are taken to provide for their safety and health. The command structure shall be utilized to request relief and reassignment of fatigued crews.

(10) Personal protective clothing/equipment designed for wildfire suppression shall not be used for interior structural firefighting.

(11) Firefighters shall not cut the electrical drip loop providing power to the structure nor pull the electrical meter.

(12) Prior to overhaul, buildings shall be surveyed for possible safety and health hazards. Firefighters shall be

informed of hazards observed during the survey and measures shall be taken to protect firefighters from these hazards.

(13) Self-contained breathing apparatus (SCBA) shall be worn throughout overhaul. SCBA shall also be worn during activities taking place in the area previously considered the hot zone after overhaul unless the officer in charge conducts an exposure evaluation to determine or reasonably estimate whether an employee is or could be exposed to either an airborne contaminant above a permissible exposure limit (PEL) listed in WAC 296-841-20025 Table 3 or other airborne hazards, such as biological/radiological/nuclear hazards. When the officer in charge cannot determine or reasonably estimate employee exposure they shall conclude that an atmosphere is hazardous to the employees in accordance with WAC 296-842-13005.

(14) During the overhaul phase officers shall identify materials likely to contain asbestos, limiting the breaching of structural materials to that which is necessary to prevent rekindle.

(15) Prior to removing firefighting ensembles worn in the hot zone, a gross decontamination shall be performed to remove potentially harmful contaminants.

(16) Members of the department conducting post-fire investigations must comply with subsections (12) through (15) of this section.

(17) Employees working on, over, or along water where the chance of drowning exists shall be provided with and shall use approved personal flotation devices, unless it can be shown that conditions are such that flotation would not be achieved.

#### NEW SECTION

**WAC 296-305-05004 Occupational exposure to heat and cold stress.** (1) Fire departments shall develop written guidelines that outline a systematic approach for the rehabilitation of members operating at incidents and training exercises. The following components must be included in this guideline:

(a) Supervisor's role in identifying climate conditions (hot or cold).

(b) The signs and symptoms of heat or cold stress and how to identify them in subordinates and fellow members.

(c) How to identify the climatic condition likely to produce heat or cold stress on members operating at emergency scenes or during training exercises.

(d) What steps the incident commander (IC) must take when the climatic condition poses a heat or cold stress hazard to members.

(e) What rest-to-work (recovery) schedule the IC must consider during climatic conditions that present a heat or cold stress hazard to members.

**Example:** NFPA 1584 states that after members use 2 30-minute SCBA bottles or 1 45-to-60-minute SCBA bottle or 40 minutes strenuous work without an SCBA the member should go to rehabilitation for a 10 to 20 minute rest and rehydrate.

(f) Which active or passive cooling and warming techniques will be used based on the incident type and climatic condition.

(g) What rehydration schedule will be followed, including the amount and type of fluids.

(h) What the department will do to ensure caloric replacement and electrolyte replacement during longer term emergencies and exercises.

(i) What medical monitoring will be provided to members in rehabilitation and what criteria will be used to release members from rehabilitation.

(j) What the IC will do when a member is showing signs of heat or cold stress after completing the department's rest-to-work cycle.

(k) What medical personnel will be present in rehabilitation to evaluate members sent to rehabilitation during the rest-to-work cycle.

To determine what temperature triggers action at each worksite, select the general type of clothing or personal protective equipment each employee is required to wear and find the corresponding temperature in Table 1.

**Table 1  
Outdoor Temperature Action Levels**

Nonbreathing clothing including vapor-barrier clothing or chemical resistant suits	52°
Double-layer woven clothing including coveralls, jackets and sweatshirts	77°
All other clothing	89°

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable in other states.

(2) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in Table 1:

(a) The environmental factors that contribute to the risk of heat-related illness.

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use.

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks.

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages.

(e) The importance of acclimatization.

(f) The different types of heat-related illness and their common signs and symptoms.

(g) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in coworkers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section.

(b) The procedures the supervisor must follow to implement the applicable provisions of this section.

(c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures.

(d) Procedures for moving or transporting an employee to a place where the employee can be reached by an emergency medical service provider if necessary.

(4) The fire department shall rotate crews as necessary to allow for rehabilitation.

(5) All members shall be provided training and information on how the body regulates core temperatures and how to recognize the signs, symptoms and controls for heat and cold stress.

(6) All members shall be provided training on the department's guideline addressing heat and cold stress.

(7) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

(8) A rehabilitation area shall be designated with features that provide shade or air conditioning with a place to sit for extremely hot environments.

(9) A rehabilitation area shall be designated with features that provide dry protected areas out of the wind or rain and a heated area with a place to sit for extremely cold or wet environments.

(10) Multiple rehabilitation areas must be set up if the geographical area or size of the scene creates barriers limiting members' access to rehabilitation.

(11) The rehabilitation area shall be of sufficient size to accommodate the number of crews using the area at the same time.

(12) Members entering the rehabilitation area that feel warm or hot shall remove their personal protective clothing. Personnel trained in basic life support shall evaluate the member and institute active or passive cooling as indicated.

(13) At a minimum, a person trained in basic life support with the knowledge and training needed shall be located in the rehabilitation area to conduct medical monitoring and evaluation of crews entering the rehabilitation area.

(14) Members shall not be released from rehabilitation until a person trained in basic life support okays their return to work.

(15) Supervisors shall assess their crew at least every forty-five minutes and more frequently when climatic conditions warrant to determine their need for rehabilitation.

(16) Members on emergency scenes and during exercises shall be provided a minimum of one quart of water per hour when the climatic conditions present heat or cold stress hazards. After one hour, caloric and electrolyte replacement must be considered.

(a) Employers must ensure that a sufficient quantity of drinking water is readily accessible to employees at all times.

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(c) Employers must encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(17) Employees showing signs or complaining of symptoms of heat-related illness must be relieved from duty, provided with a sufficient means to reduce body temperature, and monitored to determine whether medical attention is necessary.

**Note:** For further guidance, sample policies and information please consult the 2008 edition of NFPA 1584, Standard on the Rehabilitation Process for Members During Emergency Operations and Training Exercises or the United States Fire Administration's Emergency Incident Rehabilitation Manual FA-314 issued February 2008.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-05013 Aircraft rescue and firefighting.** (~~Fire departments that engage in aircraft rescue and firefighting operations shall review NFPA, Manual for Aircraft Rescue and Firefighting Operations 402M, 1991 edition.~~)  
(1) Fire departments that expect to respond to aircraft fires shall meet the applicable portions of the 2008 edition of NFPA 402, Guide for Aircraft Rescue and Firefighting Operations.

(2) Airport based fire departments shall meet the applicable portions of the 2008 edition of the NFPA 402, Guide to Aircraft Rescue and Firefighting Operations.

NEW SECTION

**WAC 296-305-05101 Technical rescue general requirements.** (1) The following sections apply to fire departments that choose to operate for any type of technical rescue operations addressed in WAC 296-305-05113 at the following levels:

- Operations level. This level represents the capability of organizations to respond to technical rescue incidents and to identify hazards, use equipment, and apply limited techniques specified in this rule to support and participate in technical rescue incidents.
- Technician level. This level represents the capability of organizations to respond to technical rescue incidents, to identify hazards, use equipment, and apply advanced techniques specified in this rule necessary to coordinate, perform, and supervise technical rescue incidents.

**Note:** Awareness level represents the minimum capability of organizations that provide response to technical rescue incidents or discover technical rescue situations during emergency scene operations and takes no offensive action. This level requires no written procedures.

(2) Members shall not operate at a level that exceeds the identified level of capability established in subsection (1) of this section.

(3) Basic life support shall be provided by the fire department at technical rescue incidents.

(4) Fire departments must meet all requirements in this section, along with all relevant requirements in the specific

technical rescue sections, before operating at the operations or technician level at a technical rescue incident.

(5) Fire departments choosing to not respond to technical rescue emergencies will ensure their employees can recognize when a technical rescue situation is present and what to do in those cases.

NEW SECTION

**WAC 296-305-05103 Technical rescue training.** (1) Training shall be provided to correspond to the operational level of the fire department. All fire departments which will be expected to perform at the operations level or higher operational level shall be trained to that level.

**Note:** The 2008 edition of NFPA 1006, Standard for Technical Rescuer Professional Qualifications outlines the minimum individual Job Performance Requirements for Level I (Operations) and Level II (Technician) rescuers.

(2) Continuing education necessary to maintain all requirements of the level of capability shall be provided by the fire department.

(3) The training program shall be evaluated annually to ensure the fire department is prepared to function at the established operational level.

(4) All required training shall be documented. Documentation shall be maintained and available for inspection by employees, their representatives, and the department of labor and industries.

NEW SECTION

**WAC 296-305-05105 Technical rescue standard operating procedure.** Fire departments that choose to operate above the awareness level for technical rescue incidents shall establish written procedures outlining the operational level of their department that are specific to their chosen level of response and the type of technical rescue operations they plan to perform.

NEW SECTION

**WAC 296-305-05107 Technical rescue incident response planning.** (1) Fire departments or a consortium of departments that choose to operate at the operations level or above shall create a written special operations incident response plan for the specific type(s) of technical rescue at which they plan to operate at or above the operations level.

(2) When nonemergency resources may be required, procedures for acquisition of these resources for technical rescue incidents shall be developed.

(3) Fire departments that choose to respond to chemical, biological, radiological, and nuclear (CBRN) incidents shall provide training and equipment to all members expected to respond.

NEW SECTION

**WAC 296-305-05109 Technical rescue equipment.** (1) Equipment.

(a) Equipment necessary for operations at technical rescue incidents, along with training exercises, shall be provided by the fire department.

(b) Training shall be provided to ensure that all equipment is used and maintained according to the manufacturer's instructions.

(2) Personal protective equipment (PPE) specific to technical rescue.

(a) Departments will provide, at no cost to employees, protective clothing and equipment to provide protection from the specific hazards to which they could be exposed.

(b) Employees must be trained in the care, use, inspection, maintenance and limitations of the protective clothing and equipment.

(c) Employees are required to wear the protective clothing and equipment provided by the department's procedures and guidelines.

#### NEW SECTION

**WAC 296-305-05111 Technical rescue safety.** (1) General.

(a) All employees must be trained on:

(i) The hazards and risks associated with department's chosen level of technical rescue operations.

(ii) How to conduct technical rescue operations at the department's chosen level while minimizing threats to rescuers.

(iii) How to use PPE.

(b) Employees assigned specific duties and functions must be trained and qualified by their department prior to being assigned those duties or functions.

(c) When employees are operating in positions or performing functions that pose a high potential risk for injury, employees qualified in basic life support must be standing by.

(2) Emergency evacuation. Departments shall establish a procedure for members to abandon the technical rescue area and to account for their safety when an imminent hazard condition is discovered. This shall include a method for notifying all members in the affected area immediately.

(3) Technical rescue safety officer. The incident commander shall assign an incident safety officer with the requisite knowledge and responsibility for the identification, evaluation, and with the authority to correct hazardous conditions and unsafe practices, at all emergency scene operations and training exercises.

(4) Incident management. Departments shall use an ICS at all technical rescue incidents and training exercises.

#### NEW SECTION

**WAC 296-305-05113 Technical rescue operational specialties.**

**Note:** When chapters of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, are required by the following sections, internal references requiring compliance with further NFPA's or additional resources are not included in these requirements.

(1) Structural collapse. Fire departments choosing to operate at the operations or technician level for structural collapse incidents must meet the requirements found in chapter

5 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(2) Rope rescue.

(a) Fire departments choosing to operate at the operations or technician level for rope rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 6 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Fire departments performing rope rescue operations must make sure previously purchased life safety ropes and equipment complies with the 2001 edition of NFPA 1983, Standard on Fire Service Life Safety Rope and System Components. Ropes and equipment purchased after the effective date of this rule must meet the requirements of the 2006 edition of NFPA 1983, Standard on Life Safety Rope and Equipment for Emergency Services.

(c) Life safety rope and rope rescue equipment shall be inspected after purchase and prior to placing in service, after each use, and at least semiannually.

(d) Harnesses shall be inspected for worn or broken stitching, rivets worn out of holes, and damage from abrasion, cuts, or chemicals.

(e) Descending/ascending hardware shall be inspected for wear, cracks, distortion, sharp edges, and ease of operation.

(f) The manufacturer's recommended shelf life of life safety ropes shall be followed. If no shelf life is specified, ropes greater than six years old shall be taken out of service as a life safety rope.

**Note:** See WAC 296-305-02019, Life safety ropes, harnesses, and hardware protection, for further requirements.

(3) Confined space rescue.

(a) Fire departments choosing to operate at the operations or technician level for confined space rescue incidents must meet the requirements of this section, chapter 296-809 WAC Table 1, and the nonconflicting sections of chapter 7 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Fire departments shall comply with chapter 296-809 WAC for their own confined spaces.

(c) Fire departments which will respond to calls to perform rescue from a permit-required confined space are required to have each member of a rescue team practice making permit space rescues at least every twelve months by means of simulated rescue operations in which they remove dummies, mannequins or actual persons from permit space. A permit is required for the practice permit space entry.

(d) During an actual rescue response, written or verbally recorded hazard sizeup will be allowed in lieu of the written permit requirements in WAC 296-809-50004 and shall be completed prior to any entry. This sizeup shall include at a minimum:

(i) Recognition and declaration of the situation as a confined space incident.

(ii) Denial of entry to unprotected persons.

(iii) Assessment of all readily available confined space documentation, e.g., MSDSs, any existing permit, plans or blueprints of the space.

(iv) Assessment of number of victim(s), locations and injury conditions.

(v) Discussion with witnesses, supervisors, and other sources of information.

(vi) Assessment of any current or potential space hazards, in particular, any hazard(s) which lead to the necessary rescue.

(vii) Determination and declaration if the situation is a body recovery or a victim rescue.

(e) At confined space incidents, at least two people outside shall be equipped with appropriate breathing apparatus to act as the back-up team, which shall remain free of the contaminated area in order to rescue disabled firefighters.

(f) Written documentation of the rescue team's training on the fire department's confined space operating procedures, authorized entrant training, and the contracted host's confined space program shall be kept. A record of each of the hazard sizeups shall be maintained for at least one year.

(g) Anytime firefighters are working inside a confined space, such persons shall be provided with SCBA or air line respirator with escape bottle, and shall use the equipment unless the safety of the atmosphere can be established by testing and continuous monitoring.

(i) If the service life of the auxiliary air supply is fifteen minutes or less it shall not be used for entry into an IDLH atmosphere but it may be used for escape purposes. The auxiliary air supply may be used for entry into an IDLH atmosphere only when the service life of the unit exceeds fifteen minutes and when not more than twenty percent of the noted air supply will be used during entry.

(ii) The maximum length of hose for supplied air respirators is three hundred feet (91 meters). Such hose shall be heavy duty nonkinking and NIOSH approved.

(4) Machinery rescue. Fire departments choosing to operate at the operations or technician level for machinery rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 12 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(5) Water rescue.

(a) Fire departments choosing to operate at the operations or technician level for water rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 9 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Organizations choosing to operate at the operations or technician level for dive rescue incidents must meet the requirements found in chapter 9 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(c) Fire departments choosing to operate at the operations or technician level for dive recovery incidents must meet the requirements found in chapter 296-37 WAC, Standards for commercial diving operations, and the nonconflicting parts of chapter 9 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(d) If a manufacturer's specifications are such that an engineer is required for the operation of a vessel, one shall be provided.

(e) When fire boats perform rescue activities they shall have two dedicated personnel. Any member not specifically required to operate the vessel, e.g., an operator (pilot) or engineer (if required by the manufacturer's specification) may be used as a deck hand. This may include the boat officer if his/her duties do not include operating the fire boat.

(f) Watercraft load capabilities shall not exceed the manufacturer's specifications.

(g) Each fire department shall determine the function of their watercraft; firefighting, rescue, or both.

(h) Watercraft operating within navigable waters of the state of Washington (as defined by the United States Coast Guard) shall comply with all of the rules of the United States Coast Guard.

(i) Fire boats operating within navigable waters of the state of Washington (as defined by the United States Coast Guard) shall have a fully dedicated pilot.

(j) The operator (pilot) of the watercraft is responsible for its safe operation.

(k) Training for all personnel shall cover the physical characteristics of the vessel involved and shall be included in the employer's accident prevention program.

(i) All assigned personnel shall be trained in safe operation of watercraft and the operations the craft is intended to perform.

(ii) All employees involved in water rescue shall be trained in water rescue techniques and use Coast Guard approved personal flotation devices, Type III, minimum.

**Exception:** Employees working below deck or in enclosed cabins or when working above, on or alongside still water where flotation would not be achieved, are exempt from this requirement.

(l) All employers operating watercraft in nonnavigable waters shall be responsible for training all employees to local hazards.

(6) Trench and excavation rescue.

(a) Fire departments choosing to operate at the operations or technician level for trench and excavation rescue incidents must meet the requirements of this section and nonconflicting portions of chapter 11 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Employees that directly engage in trench rescue operations shall be under the direct supervision of person(s) with adequate training in trench and excavation hazard recognition, equipment use and operational techniques.

(c) Each employee in an excavation shall be protected from cave-ins by an adequate protective system except when:

(i) Excavations are made entirely in stable rock; or

(ii) Excavations are less than four feet (1.22 meters) in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

(7) Mine and tunnel rescue.

(a) Fire departments choosing to operate at the operations or technician level for mine and tunnel rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 14 (Mine and Tunnel Search and

Rescue) of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) The requirements of this section shall apply to agencies that provide varying degrees of response to tunnels under construction or other underground excavations formerly classified as mines or tunnels.

(c) The requirements of this section shall not apply to operating mines, tourist mines, basements, or subterranean structures that are complete and in use or that meet the definition of a confined space.

(d) Emergency services that are the designated primary provider of rescue services for operational mines and tunnels under construction are required to comply with the nonconflicting portions of chapter 296-155 WAC Part Q, Underground construction.

(e) Members who regularly enter a tunnel under construction as part of their regular duties shall receive training meeting the requirements of the safety instruction required by WAC 296-155-730(3).

(f) Regardless of whether an atmospheric hazard is detected, any entrant into a tunnel under construction, mine or any related shaft or excavation shall have a means of emergency egress respiratory protection with no less than a thirty minute rated service life immediately available. There shall be at least one unit immediately available for each member in the tunnel.

MSHA or NIOSH approved "Self Rescuer" or "Self Contained Self Rescuer" devices fulfill this requirement provided the user has been trained in its use and the device is suitable for the type of potential hazards that may be encountered.

(g) A rescue service entry team shall have the ability at a minimum to continuously monitor the air for oxygen, carbon monoxide, hydrogen sulfide, and combustible gasses as well as any other atmospheric contaminants that are known or suspected.

(h) The rescue service entry team shall have at least two methods of communication with the surface, one of which shall be voice communication.

This requirement may be satisfied by using both the "direct" and "trunked" features of the same radio systems provided adequate equipment is available to the entry team to provide constant simultaneous communication using both methods.

(i) Rescue service entry teams that enter a mine or tunnel with a known atmospheric hazard shall have a clearly defined "turnaround" benchmark to ensure adequate egress to an area of refuge or safety.

(j) Each rescue service entry team that enters a mine or tunnel with a known or suspected atmospheric hazard shall have at least one source of breathable air independent of each wearer's SCBA to be used in the event of an SCBA failure or "out of air" emergency. This source of air is to be independent of any device brought in for the use of victims.

(k) A backup team with similar size and capabilities as the rescue service entry team shall be immediately available to enter the space.

(l) Each member of the organization who is designated as part of the technician level rescue service shall practice making mine or tunnel rescues as part of a rescue team no less

than once every twelve months. This may be accomplished by means of simulated rescue operations in which the team removes dummies, mannequins, or persons from actual mines and tunnels or from representative mines and tunnels.

Representative mine and tunnels should, with respect to opening size, configuration, and accessibility, simulate the types of mines and tunnels from which rescue is to be performed.

#### NEW SECTION

**WAC 296-305-05502 Training and member development.** (1) The employer must provide training, education and ongoing development for all members commensurate with those duties and functions that members are expected to perform.

(a) Training and education must be provided to members before they perform emergency activities.

(b) Fire service leaders and training instructors must be provided with training and education which is more comprehensive than that provided to the general membership of the fire department.

(c) The fire department shall develop an ongoing proficiency cycle with the goal of preventing skill degradation.

(2) Training on specific positions/duties deemed by the fire department critical to the safety of responders and the effectiveness of emergency operations (such as driver operators or support personnel) shall be provided at least annually.

(3) Firefighters shall be trained in the function, care, use/operation, inspection, maintenance and limitations of the equipment assigned to them or available for their use.

(4) Members who are expected to perform interior structural firefighting shall be provided with an education session or training at least quarterly.

(5) When firefighters are engaged in training above the ten foot level, where use of lifelines or similar activities are to be undertaken, a safety net or other approved secondary means of fall protection recommended in chapter 296-155 WAC, Part C-1, fall protection requirements for construction, shall be used.

(6) Continuing education live fire training.

(a) All members who engage in interior structural firefighting in IDLH conditions shall be provided live fire training appropriate to their assigned duties and the functions they are expected to perform at least every three years. Firefighters who do not receive this training in a three-year period will not be eligible to return to an interior structural firefighting assignment until they do. Responding to a fire scene with a full alarm assignment, an ICS established and a postincident analysis will meet this requirement, but for no more than two training evolutions.

(b) All live fire training shall be conducted by fire department qualified fire service instructors. When conducting their own training, fire departments must meet the requirements set out in the 2007 edition of the NFPA 1403, Standard on Live Fire Training Evolutions.

(c) An incident safety officer shall be appointed for all live fire training evolutions. The incident safety officer function shall be filled by a person who is trained and qualified in the IMS/Incident safety officer duties and who is not respon-

sible for any other function at the training evolution other than the role of incident safety officer.

(7) When using structures for live fire suppression training, activities shall be conducted according to the 2007 edition of NFPA 1403, Standard on Live Fire Training Evolutions. When using structures for nonlive fire training, the following requirements shall be met:

(a) All structures used for training must be surveyed for potential hazardous substances, such as asbestos, prior to the initiation of any training activities. The survey must comply with chapter 296-62 WAC Part I-1 and shall be conducted by an AHERA accredited inspector and performed in accordance with 40 C.F.R. 763, Subpart E. If the hazardous substances or asbestos containing materials of > 1% asbestos are to be disturbed during any training activity they must be removed prior to beginning that activity. Removal of asbestos < or = 1% is not required prior to live fire training.

In live fire training structures where < or = 1% asbestos has been disturbed, the fire department will provide written notice to the owner/agent that asbestos has been disrupted and remains on-site.

For structures built before 1978, you must assume that painted surfaces are likely to contain lead and inform workers of this presumption. Surveys for lead containing paints are not required. Lead containing paints are not required to be removed prior to training activities.

If the training activity will not disturb the hazardous substance, the material must be clearly marked and all participants must be shown the location of the substance and directed not to disturb the materials.

(b) Acquired or built structures used for fire service training that does not involve live fire must be surveyed for the following hazards and those hazards abated prior to the commencement of training activities:

(i) In preparation for training, an inspection of the training building shall be made to determine that the floors, walls, stairs and other structure components are capable of withstanding the weight of contents, participants and accumulated water.

(ii) Hazardous materials and conditions within the structure shall be removed or neutralized, except as exempted in (a) of this subsection.

- Closed containers and highly combustible materials shall be removed.

- Oil tanks and similar closed vessels that cannot easily be removed shall be vented sufficiently to eliminate an explosion or rupture.

- Any hazardous or combustible atmosphere within the tank or other vessel shall be rendered inert.

- Floor openings, missing stair treads or railings, or other potential hazards shall be repaired or made inaccessible.

(iii) If applicable, floors, railings and stairs shall be made safe. Special attention shall be given to potential chimney hazards.

(iv) Debris hindering the access or egress of firefighters shall be removed before continuing further operations.

(v) Debris creating or contributing to unsafe conditions shall be removed before continuing further operations.

(c) Asbestos training. Firefighters must be provided asbestos awareness training, including communication of the

existence of asbestos-containing material (ACM) and presumed-asbestos-containing material (PACM). Training shall be provided prior to initial assignment and annually thereafter, and must include:

(i) The physical characteristics of asbestos including types, fiber size, aerodynamic characteristics and physical appearance.

(ii) Examples of different types of asbestos and asbestos-containing materials to include flooring, wall systems, adhesives, joint compounds, exterior siding, fire-proofing, insulation, roofing, etc. Real asbestos shall be used only for observation by trainees and shall be enclosed in sealed unbreakable containers.

(iii) The health hazards of asbestos including the nature of asbestos related diseases, routes of exposure, dose-response relationships, synergism between cigarette smoking and asbestos exposure, latency period of diseases, hazards to immediate family, and the health basis for asbestos standards.

(iv) Instruction on how to recognize damaged, deteriorated, and delamination of asbestos-containing building materials.

(v) Decontamination and clean-up procedures.

(vi) Types of labels that are used within different industries to identify ACM or PACM that is present within structures. The labeling system the employer will use during training to identify asbestos and ACM/PACM during destructive drilling and training.

(vii) The location and types of ACM or PACM within any fire department owned or leased structures and the results of any "Good Faith Survey" done on fire department owned or leased structures.

(8) Asbestos exposure during destructive training activities. Fire department employees are exempt from the requirements of chapter 296-65 WAC and WAC 296-62-077, provided they comply with the following requirements:

(a) Fire departments must obtain a good faith asbestos inspection/survey from the property owner/agent prior to disturbing building materials. The good faith survey must comply with chapter 296-62 WAC Part I-1 and shall be conducted by an AHERA accredited inspector and performed in accordance with 40 C.F.R. 763, Subpart E.

(b) Good faith surveys must be shared with all employers and employees prior to using any structure.

(c) Materials containing >1% asbestos must be marked by a system recognized by all members. ACM/PACM may not be disturbed prior to, or during training, or must be removed by a certified asbestos abatement contractor prior to training activities. The incident safety officer for the training must walk all participants through the structure and inform them of the location of all ACM/PACM and that this material is not to be disturbed. If the structure is used for a black-out drill, the incident safety officer must instruct members that ACM/PACM is present and take precautions to ensure these materials are not disturbed during the training. A walk through is not required for black-out drills.

(d) Destructive drilling must not occur in a structure until the fire department has received a good faith asbestos survey from the owner/agent and ensured that any ACM or PACM has been abated from substrates upon which destructive drill tasks are planned to be performed. All suspect asbestos

materials designated for destructive drill tasks will be identified, evaluated and tested by an accredited AHERA lab.

(e) Materials containing < or = 1% asbestos must be labeled by a system recognized by all members. Prior to initiating any destructive drilling on materials containing < or = 1% asbestos, the incident safety officer for the training must walk all participants through the structure and inform them of the location of asbestos.

(f) Firefighters must wear SCBA and turnouts whenever exposed to asbestos.

(g) Firefighters must be provided gross decontamination at the drill site by rinsing/brushing the firefighters turnouts and SCBA with water.

(h) Hand tools and other asbestos contaminated equipment will be rinsed off prior to being returned to the apparatus or service. Tools and equipment that cannot be decontaminated on site must be placed in sealed containers until they can be decontaminated. Care must be taken to not spread the asbestos.

(i) PPE that may have been contaminated with asbestos must be cleaned in a manner recommended by the manufacturer and that prevents the exposure of the employee cleaning the PPE. PPE that cannot be cleaned on-site must be placed in sealed containers until they can be decontaminated.

(j) In structures scheduled for demolition, or that will be turned over to another employer, where < or = 1% asbestos has been disturbed, the fire department will provide written notice to the owner/agent that asbestos has been disrupted and remains on-site. The fire department will inform the owner/agent, in writing, that access to the property must be limited to the demolition or asbestos contractor.

(k) The fire department will secure the structure after all drills and at the conclusion of the use of the structure. Securing the structure may include but not be limited to: Locking or boarding up windows, doors, and wall and roof openings. The site of the structure may also require fencing. When asbestos material of < or = 1% has been disturbed by the fire department's drill activities, the site will be posted with warning signs. These signs will notify entrants onto the site that asbestos debris of < or = 1% has been left on the site. For fire department members who plan to enter the structure or the building footprint, the signs will state the necessity of full turn-outs and SCBA with decontamination procedures. The signs will also state that entry into the building or the building footprint is prohibited by any persons other than the fire department and the demolition/abatement contractor.

(9) Additional training. Training must be provided on topics according to the job duties and potential hazards as outlined in Table X, Subject Specific Training.

<b>Table X Subject Specific Training</b>	
<b>Topic</b>	<b>Training requirements found in:</b>
HEALTH AND SAFETY	
Noise and hearing loss prevention	<ul style="list-style-type: none"> <li>• Chapter 296-817 WAC, Hearing loss prevention (noise)</li> <li>• WAC 296-305-02004</li> </ul>

<b>Table X Subject Specific Training</b>	
<b>Topic</b>	<b>Training requirements found in:</b>
Respiratory equipment	<ul style="list-style-type: none"> <li>• Chapter 296-842 WAC, Respirators</li> <li>• WAC 296-305-04001</li> </ul>
Employee right-to-know procedures	<ul style="list-style-type: none"> <li>• WAC 296-800-170, Employer chemical hazard communication—Introduction</li> </ul>
Identification and handling of asbestos-containing materials likely to be encountered during a fire response	<ul style="list-style-type: none"> <li>• WAC 296-62-07722(5) as appropriate to asbestos encountered during a fire response, or EPA awareness level asbestos two hour training course</li> </ul>
FIRE SUPPRESSION	
Overhaul procedures and operations	<ul style="list-style-type: none"> <li>• WAC 296-305-05000 and 296-305-05002</li> </ul>
Live fire training in structures	<ul style="list-style-type: none"> <li>• NFPA 1403, Standard on Live Fire Training Evolutions, 2007 Edition</li> </ul>
Wildland fires	<ul style="list-style-type: none"> <li>• WAC 296-305-07010 through 296-305-07019</li> <li>• The National Wildfire Coordination Group (NWCWG) firefighter II</li> <li>• All training for assigned wildland incident command positions must be completed prior to assignment by the IC</li> </ul>
INCIDENT MANAGEMENT	
Incident management training	<ul style="list-style-type: none"> <li>• National Incident Management System</li> <li>• NFPA 1561, Standard on Emergency Services Incident Management System, 2008 edition (available on-line)</li> </ul>
EMERGENCY MEDICAL	
Emergency medical training	<ul style="list-style-type: none"> <li>• WAC 296-305-02501</li> </ul>
HAZARDOUS MATERIALS	
Hazardous materials training	<ul style="list-style-type: none"> <li>• Chapter 296-824 WAC, Emergency response</li> <li>• Nonconflicting portions of NFPA 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition</li> </ul>
TECHNICAL RESCUE	
Confined space entry and/or rescue	<ul style="list-style-type: none"> <li>• Chapter 296-809 WAC, Confined spaces</li> <li>• WAC 296-305-05004</li> </ul>

<b>Table X Subject Specific Training</b>	
<b>Topic</b>	<b>Training requirements found in:</b>
	<ul style="list-style-type: none"> <li>• Nonconflicting portions of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, 2004 edition</li> <li>• Nonconflicting portions of NFPA 1006, Professional Qualifications for Technical Rescue, 2008 edition</li> </ul>
Other technical rescue situations, such as rope, structural collapse, transportation/machinery, trench, water, and wilderness rescue	<ul style="list-style-type: none"> <li>• NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, 2004 edition</li> <li>• Nonconflicting portions of NFPA 1006, Professional Qualifications for Technical Rescue, 2008 edition</li> </ul>
POSITION SPECIFIC DEVELOPMENT	
Aircraft	<ul style="list-style-type: none"> <li>• NFPA 402, Guide for Aircraft Rescue and Firefighting Operations, 2008 edition</li> </ul>
Driver training	<ul style="list-style-type: none"> <li>• WAC 296-305-04505(8)</li> </ul>

instructors) wearing personal protective equipment as described herein to instruct personnel in safe roof ventilation/rescue techniques.

(7) When not in use, the cutting teeth on a chain saw shall be covered either by an old section of hose, a wooden scabbard, or an equivalent method.

(8) All axes worn by employees shall be provided with a scabbard to guard against injury from the blade and pick of the axe.

(9) The guards on smoke ejectors, as supplied by the manufacturer, shall not be removed and the operator of the ejector shall wear gloves.

(10) Acetylene cylinders. Handling, storage and utilization of acetylene in cylinders shall be in accordance with the Compressed Gas Association Pamphlet G-1 - ((4966)) 2003 edition.

(11) Powder activated life-line guns and accessories shall be stored in a box or container equipped with a lid or cover.

(a) The box shall be kept closed when not in use.

(b) A loaded life-line gun shall not be placed in the storage box.

(c) Instruction books, cleaning kits and hand tools needed for maintenance or breakdown purposes shall be kept in the life-line gun storage box.

(d) The words "powder activated tool" shall be conspicuously printed on the top of the storage box.

(12) Abrasive blades in storage, not on a saw, shall be protected from contact with water, liquids, petroleum products and their fumes.

(13) Fiber rope that has been subjected to injurious chemicals or excessive heat shall not be used for load carrying purposes.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06001 Fire service equipment.** (1) All portable equipment shall be inspected routinely to ensure that it is ready for use.

(2) Any defective equipment shall be removed from service.

(3) Nylon utility straps or straps of equivalent strength should be used instead of hose belts. The utility strap shall be of one-inch nylon, or equivalent belting, with a four-inch overlap and sewn with polyester thread and shall measure at least 102 inches on the outside circumference.

(4) The load capacity shall be stenciled on each portable jack and the load capacity shall not be exceeded.

(5) The instruction plate on portable jacks shall be maintained in a legible condition.

(6) Portable powered cut-off saws (rescue saws) shall be used in accordance with the manufacturer's recommendations.

Exception: The lower blade guard described in WAC ((296-24-65501-(4)(a))) 296-807-12005 is not required on hand-held portable powered cut-off saws used by fire/rescue personnel for rescue procedures and/or roof ventilation for smoke removal, provided the operator is wearing appropriate eye, face, head, and body protection as specified in WAC 296-305-02001 through ((296-305-02013)) 296-305-02012. This exception also applies to qualified persons (e.g.,

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06003 Testing fire service equipment.**

(1) ~~((When testing fire hose, a restricted orifice disc having not more than a 25% opening, shall be installed on the pumper discharge port. Or in the alternative, the pumper discharge valve may be opened not more than 25% to insure a minimum volume of water in case of a bursting hose.))~~ All fire suppression and supply hose must be tested annually as well as when there is reason to believe the hose has been damaged. Testing shall be in accordance with the 2003 edition of NFPA 1962, Standard for the Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles and the Service Testing of Fire Hose.

(2) Safety nets shall be tested annually by dropping a weight of not less than 400 pounds from the highest point to be used above the net. The test weight object may consist of two tightly tied rolls of two and one-half inch hose, each 100 feet long, or any other object having similar weight and dimension.

(a) The net suspension system shall be designed and constructed with a safety factor of four and as a minimum, shall withstand the test loading without permitting contact between the net and any surface or object below the net.

(b) Forged steel safety hooks or shackles shall be used to fasten the net to its supports.

(c) Training requiring safety net protection shall not be undertaken until the net is in place and has been tested by the weight of three firefighters on the net.

(d) Safety nets shall extend eight feet beyond the edge of the work surface.

(e) The mesh size of nets shall not exceed six inches by six inches.

(f) All nets shall meet accepted performance standards of 17,500 foot pounds minimum impact resistance as determined and certified by the manufacturer, and shall bear a label of proof test.

(g) Edge ropes shall provide a minimum breaking strength of 5,000 pounds.

~~(3) (Life belts shall meet or exceed the strength requirements of ANSI A10.14 – Requirements for Safety Belts, Harnesses, Lanyards, Lifelines and Drop Lines for Industrial Use. Life belts shall be inspected after each use and not less than semi-annually in accordance with manufacturer's instructions.~~

~~(4) Rescue ropes shall be used for rescue purposes only.~~

~~(5) Rescue ropes shall meet the following requirements:~~

~~(a) Rescue ropes shall be constructed of rot-proof fiber with a melting point of not less than 400 degrees F;~~

~~(b) They shall be of abrasion resistant construction;~~

~~(c) They shall have a minimum breaking strength of not less than 9,000 pounds.~~

~~(6) Rescue ropes shall be inspected after each use and not less than semi-annually in accordance with manufacturer's instructions.~~

~~(7)) The method of testing a life line gun shall be in accordance with the manufacturer's recommended procedure.~~

#### NEW SECTION

**WAC 296-305-06006 Ground ladders.** This section establishes the minimum requirements for the construction, care and use of fire department ground ladders.

(1) New ground ladders purchased after the effective date of this chapter shall be constructed and certified in accordance with the 2004 edition of NFPA 1931, Standard on Design and Design Verification Tests for Fire Department Ground Ladders.

(2) Firefighters shall climb and descend ground ladders with the fly in, for safety purposes, when not in conflict with the manufacturer's recommendations. Even when ladders are routinely used in the fly-out configuration, in adverse conditions firefighters shall be permitted to climb and descend ground ladders with the fly in to assure secure footing.

(3) All ground ladders shall be maintained in accordance with the manufacturer's recommendations and visually inspected at least once a month and after every use. The following ladder components shall be visually inspected:

(a) Heat sensor labels, if provided, for a change indicating heat exposure.

(b) All rungs for snugness and tightness.

(c) All bolts and rivets for tightness.

(d) Welds for any cracks or apparent defects.

(e) Butt spurs for excessive wear or other defects.

(f) Halyards for fraying or breaking.

(g) Roof hooks for sharpness and proper operation.

(h) Beam and rungs for punctures, wavy conditions, worn serrations or deformation.

(i) Surface corrosion.

(4) The following wood ladder components shall be checked:

(a) Beams for dark streaks. When a wood ground ladder develops dark streaks in the beams, the ladder shall be removed from service and service tested as specified in subsection (9) of this section.

(b) Loss of gloss on the protective finish of fiberglass or wood ladders, signifying damage or wear.

(5) Any sign of damage or defect during a visual inspection shall be cause to remove the ladder from service until it has been repaired. Scratches and dents shall not be cause for a ladder to fail a test if it passes the appropriate service test.

(6) If the heat sensor label has an expiration date, and that date has passed, the heat sensor label shall be replaced.

(7) Whenever any ground ladder has been exposed, or is suspected of having been exposed to direct flame contact, or wherever the heat sensor label has changed to indicate heat exposure, the ladder shall be service tested according to subsection (9) of this section.

(8) Temporary repairs shall not be made to ground ladders.

(9) When ground ladders are tested, they shall be tested in accordance with the strength service testing procedures of the 2004 edition of NFPA 1932, Standard on Use, Maintenance and Service Testing of In-Service Ground Ladders, section 7.2.

#### NEW SECTION

**WAC 296-305-06008 Electrical.** (1) Temporary power and lighting with the use of 110 - 120 VAC and 220 - 240 VAC equipment.

(a) All lighting equipment shall be provided with heavy duty flexible cords with SO or SJ jackets or equivalent. All lighting equipment shall be used with heavy duty flexible extension cords rated for the intended load with SO or SJ jackets or equivalent.

(b) Flexible cords and cables shall be approved and suitable for conditions of use and location.

(c) Flexible cords shall be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(d) Flexible cords shall be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws.

(e) Flexible cords and cables shall be protected from accidental damage. Sharp corners and projections shall be avoided. Where passing through doorways or other pinch points, flexible cords and cables shall be provided with protection to avoid damage.

(f) The path to ground from power cords, equipment, and temporary lights shall be continuous.

(g) Electrical equipment, tools, and temporary lights that are used in wet or damp locations or other hazardous atmospheres shall be approved for the purpose.

(h) Electrical equipment, tools, and temporary lights shall be constructed so that water cannot enter or accumulate in wireways, lampholders or other electrical parts.

(i) Electrical equipment, tools, and temporary lights that are used in wet or damp locations or hazardous atmospheres shall have 120 VAC single-phase 15 or 20 amp in-line resettable ground fault circuit interrupters.

(j) Temporary lights shall be equipped with a handle and be insulated from heat and possible electrical shock.

(k) Temporary lights shall not be suspended by their electrical cords unless cords and lights are designed and labeled for this means of suspension.

(l) Temporary lights shall be protected by guards of a nonconductive or insulated material to prevent accidental contact with the bulb.

(2) 120 VAC cord reels shall be approved for use in wet or damp locations or hazardous atmospheres.

(a) Bodies and caps shall be weather tight, 15 amp rated at 120 VAC.

(b) Cords on cord reels that do not exceed one hundred fifty feet in length shall be SO or SJ type jackets or equivalent.

(c) Cords that exceed one hundred fifty feet in length on reels, shall have 10-gauge conductors.

(d) Cord reels that are not permanently mounted on a vehicle shall be insulated from the ground when in use.

(3) 12 volt portable type hand lanterns shall be constructed of molded composition or other type approved for the purpose.

(a) Portable hand lanterns used in wet or damp conditions or other hazardous atmospheres shall be operated at a maximum of 12 volts.

(b) Hand lamps shall be equipped with a handle and a substantial guard over the bulb and attached to the lampholder.

(4) Portable and vehicle-mounted generators.

(a) Portable generators. Under the following conditions, the frame of a portable generator shall not be required to be grounded and shall be permitted to serve as the grounding electrode for a system supplied by the generator:

(i) The generator supplies only equipment mounted on the generator or cord-connected and plug-connected equipment through receptacles mounted on the generator, or both; and

(ii) The noncurrent-carrying metal part of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(b) Vehicle-mounted generators. Under the following conditions, the frame of a vehicle may serve as the grounding electrode for a system supplied by a generator located on the vehicle:

(i) The frame of the generator is bonded to the vehicle frame;

(ii) The generator supplies only equipment located on the vehicle and/or cord-connected and plug-connected equipment through receptacles mounted on the vehicle or on the generator; and

(iii) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(5) Electrical equipment used in classified locations must conform to the requirements set out in WAC 296-24-95613, Hazardous (classified) locations. Definitions pertaining to classified locations can be found in WAC 296-24-95601.

Additional references: Article 250 National Electrical Code. Chapter 296-24 WAC, Part L and WAC 296-800-280.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06501 Requirements for fire ((station)) department facilities.** WAC 296-305-06501 through 296-305-06519 pertain to all fire department facilities as defined in WAC 296-305-01005.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-305-06503 General requirements.** (1) Stations and administrative offices shall comply with the requirements of the general occupational health standards, WAC 296-800-210, Lighting in the workplace.

(2) Every new fire station (~~(built after the effective date of this chapter)~~), whether manned or unmanned, shall be equipped with an approved emergency lighting system that will light dormitories, hallways, and apparatus bay areas in case of electrical power failure.

(3) ~~(No)~~ New fire stations or new additions to an existing fire station((,-shall)) that incorporate sliding poles or slides in their design or construction must meet the following requirements:

(a) The sliding pole floor opening will be enclosed by walls with access provided to the floor opening only through a door.

(b) The door will have a latch or knobs no lower than five feet from the floor.

(c) The door will be equipped with a system that will automatically keep the door locked unless an alarm requiring a response sounds in the fire station. This automatic lock system will allow for a manual override, which will be used only to enable inspection, maintenance, repair or replacement of the sliding pole, the enclosure, the door, or other features of the sliding pole system. The automatic lock system will feature a warning light above or adjacent to the door that will indicate when the door is unlocked.

(d) Permanent illumination which cannot be manually turned off will be provided in the pole hole.

(e) The automatic lock system will be subject to monthly inspections.

(f) The sliding pole floor opening will be illuminated constantly in a manner that cannot be overridden manually, except as needed for inspection, repair, maintenance, or replacement.

(g) The bottom of the sliding pole will be cushioned by a minimum three-foot diameter rubber mat or its equivalent.

(h) Nothing will be stored or placed at the bottom of the sliding pole for a radius of three feet from the pole.

(i) Doors will not protrude within three feet of the pole.

(j) Proper sliding pole use will be included as part of the formal firefighter training program.

(4) The requirements of chapter ~~((296-24))~~ 296-878 WAC, ((Part B-2,)) window ((washing)) cleaning, shall be followed when employees are engaged in window washing operations.

(5) All new fire stations and other new fire department facilities which contain sleeping quarters shall be fully protected with automatic sprinkler systems.

(6) All existing fire stations and existing fire department facilities with sleeping quarters, that undergo a major renovation that consists of more than sixty percent of the assessed evaluation of the existing structure shall be fully protected with automatic sprinkler systems.

(7) Eye protection shall be worn when charging, changing or adding fluid to storage batteries. Personnel that will be charging storage batteries shall be qualified to perform this function by the employer. See WAC ~~((296-24-23015))~~ 296-800-16050.

(8) Stairway tread shall be of a nonskid design. Examples of nonskid: Grip strut grating, serrated edge grating, metal grating, aluminum safety tread, abrasive metal stair tread, or pressure sensitive nonskid type.

(9) In existing facilities where sliding poles or slides are used, the pole or slide hole shall be guarded in such a manner as to prevent anyone from walking directly into the pole or slide hole opening.

(10) To absorb the shock to sliding employees, the bottom of all slide poles or slides shall have a three-foot diameter cushioned rubber mat, or its equivalent.

(11) Nothing shall be stored or placed at the bottom of a pole or slide hole for a radius of three feet from the pole. Doors shall not protrude within three feet of the pole or slide.

(12) Stair and landing protection: Stairways, guardrails, landings, and handrails shall be constructed to the requirements of chapter 19.27 RCW the State Building Code Act, and ~~((chapter 296-24 WAC, Part J-1))~~ WAC 296-800-250.

(13) A standard guard railing for a landing platform shall include a toeboard, which is a vertical barrier, at floor level erected along exposed edges of a floor opening, wall opening, platform, runway or ramp to prevent falls of material.

(14) Any new facility, or addition, alteration, or repair to an existing facility shall be in compliance with chapter 19.27 RCW, the State Building Code Act.

(15) New stations containing a kitchen, and station kitchens remodeled after the date of this chapter, shall have an alarm activated service disconnect of fixed cooking appliances.

(16) Asbestos in facilities, buildings, and properties used by fire departments.

(a) Fire department employees shall be informed of the presence and location of asbestos-containing material (ACM) and presumed-asbestos-containing material (PACM) in areas of buildings where employees work.

(b) Damaged and deteriorating asbestos in fire stations and facilities must be repaired, removed, enclosed or encapsulated.

(c) ACM and PACM in fire stations and facilities shall be labeled according to WAC 296-62-07721(6).

(d) WAC 296-62-07723, Housekeeping, shall apply to fire stations and facilities.

(e) Fire departments that do not comply with this section must comply with the requirements relating to asbestos set out in chapters 296-62 and 296-65 WAC.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06505 Sanitation, disinfection, cleaning, and storage areas.** (1) Fire departments shall provide facilities for disinfecting, cleaning, and storage.

(2) A designated cleaning area shall be provided for under the fire department's exposure control plan for the cleaning and disinfecting of protective equipment, portable equipment, and other clothing.

(a) Fire departments that engage in emergency medical operations shall provide or have access to disinfecting facilities for the cleaning and disinfecting of emergency medical equipment.

(b) Disinfecting shall not be conducted in fire station kitchen, living, sleeping, or personal hygiene areas.

(c) Disinfecting facilities in fire stations shall be vented to the outside environment, and designed to prevent contamination of other fire station areas.

(d) The disinfecting facility shall contain a sink with hot and cold water faucets. All surfaces shall be nonporous surfaces.

(e) Handwashing facilities shall be readily accessible to members. Handwashing facility means a facility providing an adequate supply of running potable water, soap and single use towels or hot air drying machines. When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleaner in conjunction with clean cloth/paper towelettes or antiseptic towelettes.

(3) Protective clothing or equipment that ~~((needs to be decontaminated and/or disinfected))~~ is contaminated or potentially contaminated shall not be allowed in any kitchen, living, sleeping, ~~((or))~~ personal hygiene or other nonwork area.

(4) The designated cleaning area shall be physically separate from areas used for food preparation, cleaning of food and cooking utensils, personal hygiene, sleeping, and living areas.

(5) Drying areas for protective clothing shall be well ventilated.

(6) Storage areas: Emergency medical supplies and equipment stored in fire stations, other than that stored on vehicles, shall be stored in a dedicated enclosure and maintained per manufacturer's instructions.

(7) Reusable emergency medical supplies and equipment, protective clothing, and protective equipment shall not be stored in kitchen, living, sleeping, or personal hygiene areas, nor shall it be stored in personal clothing lockers.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06507 Sleeping areas.** (1) All sleeping areas in fire stations shall be separated from vehicle storage

areas by at least one-hour fire resistive assemblies. (~~Compliance with this section shall be required within three years of the effective date of this chapter.~~)

(2) Sleeping areas shall be protected by smoke and carbon monoxide detectors.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-305-06511 Indoor air quality.** Air quality shall be consistent with (~~WAC 296-62-075 through 296-62-07515, Air~~) chapter 296-841 WAC, Airborne contaminants, and WAC 296-800-240, Environmental tobacco smoke.

((Note: For extended work shifts all eight-hour PEL's shall be time-weighted to adjust for additional worker exposure during extended work shifts.))

(1) If indoor air monitoring indicates over-exposure to contaminant PEL's, engineering controls shall be utilized to reduce firefighter exposure to the lowest feasible level.

(2) All fixed internal combustion equipment such as, but not limited to emergency generators, shall be effectively exhausted to the exterior of the fire stations.

(3) All facilities dedicated to the maintenance and repair of internal combustion equipment shall have means for effective ventilation to the exterior of the building.

(4) All new fire stations (~~(built after January 1, 1997)~~) shall be designed and constructed to conform to ACGIH ventilation recommended criteria for exhaust of internal combustion engines.

Additional reference: Industrial Ventilation Manual of Recommended Practices ISBN No.: 0-936712-65-1.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06513 Refueling areas.** (1) Refueling pumps, if installed, shall be in accordance with the provisions of the (~~Uniform~~) International Fire Code and WAC 296-24-33015.

(2) Dispensing of Class 1 liquids shall be as required in the (~~Uniform~~) International Fire Code.

(3) Spillage of oil or fuel shall be properly disposed of or completely evaporated and the fuel tank cap replaced before restarting engine.

(4) Fueling areas shall be posted - "NO SMOKING - STOP YOUR MOTOR."

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-305-06515 Hose drying towers.** (1) The floor openings on hose tower platforms shall be equipped with a forty-two inch guardrail with mid-rail and shall be capable of withstanding a force of 250 pounds applied in any direction at any point on the top rail. The work platform shall be equipped with toeboards.

(2) The requirements for offset ladder platforms and ladder cage guards, when ladders extend beyond twenty feet, shall apply to hose drying towers.

(3) Ropes and attachments used to hoist hose in the hose towers shall have a breaking strength of 1500 pounds for a safe load strength of 300 pounds (five-to-one safety factor).

(4) Approved head protection shall be worn by all persons in the hose tower whenever hose handling/hanging operations are taking place.

(5) Ropes utilizing a pulley block shall be appropriately sized for the sheave to prevent possible jamming or damage to the rope.

(~~Additional reference: Chapter 296-24 WAC, Part J-1 and chapter 296-800 WAC.~~)

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06517 Drill tower training facilities.**

(1) Permanent fixed ladders on the outside of drill towers and drill buildings are exempt from the requirements of offset platform landings and ladder cage guards.

(2) Drill tower construction and operations shall comply with the following:

(a) Burn buildings used for live fire training shall be engineered for such use.

(b) Drill towers shall not be used for live fire training except when burn rooms are provided.

(c) Burn rooms, if included in the building, shall be engineered into drill towers.

(d) All walking surfaces in the drill tower shall be slip resistant.

(e) Railings shall be designed with a four-to-one safety ratio for 250 pound firefighters who may be operating a charged hose line on the fire escape.

(f) Rappelling anchors shall be engineered to support (~~(4500)~~) 5000 pounds per person supported by the anchor.

(g) Rappelling anchors shall be readily identifiable.

(h) Rappelling anchors shall be certified by a structural engineer.

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

**WAC 296-305-06519 Fire station equipment and tools.** (1) Equipment and tools in maintenance shops shall be guarded as required by the guarding provisions of chapter 296-806 WAC, Machine safety, and chapter 296-807 WAC, Portable power tools.

(2) Exposure of fan blades. When the periphery of the blades of a fan is less than ten feet above the floor or working level, the blades shall be guarded. The guard shall have openings no larger than one-half inch. This provision shall not apply to residential ceiling fans.

(3) Abrasive wheels and grinders.

(a) All abrasive wheels and grinders, shall be guarded as required by chapter 296-806 WAC, Machine safety.

(b) Goggles or face shields shall be used when grinding.

(c) Abrasive and composite blades shall be stored and protected against exposure to fuel and oil.

(d) Work rests on bench mounted abrasive wheel grinders shall be used to support the work. These shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted sufficiently

close to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest. Adjustment of the work rest shall not be made while the wheel is turning.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-07001 Wildland fire operations.** ~~((+) This section shall apply to all personnel and agencies called on to provide services at any fire defined as a "wildland fire."~~

~~(2) This section shall not apply to suppression action taken on fires prior to the fire meeting the definition of a "wildland fire."~~

~~(3) Employers shall provide at no cost to the employee, the protective equipment and protective clothing required by this chapter. Personnel performing suppression actions on a wildland fire shall wear the provided protective clothing as directed by their fire department's procedures/guidelines.))~~  
Definitions:

Urban wildfire: An uncontained fire requiring suppression action usually spreading through ground cover, vegetative fuels, brush, grass, and landscaping; often threatening residential and commercial structures within an urban environment with access to established roadways and water systems.

Wildland firefighting: The activities of fire suppression and property conservation in woodlands, forests, grasslands, brush, and other such vegetation or any combination of vegetation that is involved in a fire situation but is not within buildings or structures.

(1) WAC 296-305-07010 through 296-305-07018 shall only apply to personnel and agencies called on to provide services at any fire defined as a "wildland fire."

(2) Employers shall provide, at no cost to the employee, the protective equipment and protective clothing required by this chapter. Personnel performing suppression actions on a wildland fire shall wear and maintain the provided protective equipment and clothing as directed by their department's procedures and guidelines.

#### NEW SECTION

**WAC 296-305-07002 Wildland fire personnel accountability.** (1) Urban wildfire and wildland firefighters shall not be required to wear personal alerting devices except when wearing self-contained respiratory equipment.

(2) An officer shall maintain positive communication with any individual during those times that the member is assigned an ancillary firefighting task (examples would include, but are not limited to, scout, incident safety officer, or lookout).

(3) Urban wildfire and wildland firefighters engaged in direct fire attack shall work in teams of two or more unless they are in visual or voice contact with an officer.

(4) On initial attack fires, the incident commander shall maintain the name and location of all personnel on the incident.

(5) On extended attack fires, the incident commander shall:

(a) Ensure the maintenance of the name and location of all personnel within their unit, division, or branch.

(b) Transfer/confirm personnel and unit information to the appropriate incident command system (ICS) staff as soon as possible.

(c) Announce transfer of command to all on scene.

(d) Ensure that personnel and unit information is recorded in the command post as soon as possible.

(6) When a fire "blows up" or makes a run that crosses planned control lines, officers with affected crews shall conduct an accounting of all personnel assigned to fire suppression and report any missing personnel to the incident commander.

#### NEW SECTION

**WAC 296-305-07004 Heat-related illness prevention for wildland firefighters.** (1) At all wildland fires, members shall be provided with a minimum of one quart per hour of electrolyte drinks or potable water.

(2) Officers at wildland fires shall be trained in the symptoms of heat-related disorders and shall observe their crews for such behavior. Appropriate action shall be taken in the event a crew member displays such symptoms.

(3) At all wildland fires, the incident commander shall consider the circumstances of the incident and make adequate provisions early in the incident for the rest, rehabilitation and hydration of all members operating at the scene. These provisions shall include fluid replenishment; other factors to consider are the extremes of the climatic conditions and other environmental factors that increase the firefighter's heat stress.

(4) One hour is the maximum time that individuals can work in high temperatures in structural protective clothing. Agencies may substitute crews to avoid the one-hour bench mark or increase crew size to complete the job in less than one hour.

(5) Members may be reassigned to return to duty throughout the incident cycle once a work-to-rest ratio (company and crew) rehabilitation rotation has been established.

**Note:** WAC 296-305-05004, Occupational exposure to heat and cold stress, may be of assistance while developing a plan, establishing training topics, and identifying environmental factors to consider for incident rehabilitation. The 2008 edition of NFPA 1584, Standard on the Rehabilitation Process for Members During Emergency Operations and Training Exercises may also assist in establishing a rehabilitation plan.

#### NEW SECTION

**WAC 296-305-07006 Equipment for wildland firefighting.**

**Note:** Equipment is considered in this section as those items not configured as a part or portion of the vehicle body.

(1) All equipment on an apparatus shall be carried in an enclosed compartment or otherwise securely mounted on the apparatus and guarded, so that individuals cannot accidentally come in contact with equipment that may injure them.

(2) All hand tools, when not in use, shall have appropriate covers and guards to prevent injury.

(3) Firefighters whose duties require them to operate a power chain saw shall wear flexible ballistic nylon pads, sewn or otherwise fastened into the trousers, or other equivalent protection that shall cover the full length of the thigh to the top of the boot. Additional trouser, eye, hearing, face and head protection as required by this chapter shall be worn.

(4) Employees shall not use the chainsaw to cut directly overhead, or at a distance that would require the operator to relinquish a safe grip on the saw.

(5) Only personnel trained in firing equipment shall handle and use such equipment, and observe the manufacturers' recommendations.

#### NEW SECTION

**WAC 296-305-07008 Aircraft operations for fighting wildland fires.** (1) Whenever fixed wing and rotary aircraft are being utilized on an incident, personnel trained in air operations management shall be assigned as necessary by the incident commander/operations section chief.

(2) Prior to the initiation of air operations, all personnel operating in close proximity to an air drop shall be notified of such activity.

(3) Personnel shall not intentionally operate in an area where it can reasonably be expected that they may be hit with retardants or suppressants from fixed wing or rotary aircraft.

(4) Radio communications shall be maintained between an aircraft/air attack group supervisor and the appropriate ground officer.

(5) Personnel assigned to ride in fixed wing or rotary aircraft shall be briefed in the correct approach, riding and off-loading procedures for the particular type of aircraft.

**Note:** The NWCG aircraft passenger briefing/checklist can be found in the "*Incident Response Pocket Guide*" at [http://www.nwcg.gov/pms/pubs/IRPG\\_Jan2004.pdf](http://www.nwcg.gov/pms/pubs/IRPG_Jan2004.pdf)

#### NEW SECTION

**WAC 296-305-07010 Training for wildland firefighting.** (1) This section shall apply to all personnel and agencies called on to provide services at any fire defined as a "wildland fire."

(2) This section shall not apply to structural suppression crews' actions taken on urban wildfires.

(3) Suppression personnel assigned to a wildland fire shall be trained to a NWCG firefighter level II or a comparable class of training.

(a) "Comparable" training shall be determined by the employer.

(b) Nothing in this section shall preclude the use of local residents, affected parties or contracted firefighting resources to suppress wildland fires if they are under the direct supervision of a qualified fire line officer.

(4) Supervisory personnel shall be trained to a level commensurate to the position and responsibility they are to assume.

(5) All personnel will be trained and capable of demonstrating competency in utilizing the Incident Command System (ICS).

(6) All suppression personnel shall annually review the ten fire orders, the eighteen "watch out" situations, and the four common denominators of tragedy fires.

**Note:** The National Interagency Fire Center's "Wildland Fire Safety Training Annual Refresher (WFSTAR)" is a good resource for training topics related to wildland firefighting. These resources can be found at <http://www.nifc.gov/wfstar/index.htm>

#### NEW SECTION

**WAC 296-305-07012 Personal protective clothing and equipment for wildland firefighting.** (1) Protective apparel and equipment for wildland firefighters shall be designed to provide thermal protection for the firefighters against external heat sources with flame resistant clothing and equipment without creating high heat stress loads due to the prolonged work periods they experience. Members performing suppression on a wildland fire shall wear a provided protective clothing ensemble as directed by their employer. The combined protective clothing ensemble includes:

- (a) Hardhat/helmet;
- (b) Upper and lower torso clothing;
- (c) Gloves; and
- (d) Goggles.

The 2005 edition of NFPA 1977, Standard Protective Clothing and Equipment for Wildland Firefighting, shall serve as a guideline for determining performance characteristics of this clothing.

**Note:** This requirement does not apply to logging company employees whose primary job duty is not fire suppression, but are called upon to fight a wildland fire they discover.

(2) As a minimum, members shall wear provided leather lace-up boots of sturdy construction which shall extend upward a minimum of eight inches above the top of the sole to the lowest point of the top of the boot. The sole of the boot shall be slip resistant.

(3) Additional personal protective equipment to be provided and worn shall include a fire shelter as directed by the incident commander. Persons provided fire shelters shall be trained in their use and shall receive refresher training at least annually.

(4) Wildland protective clothing shall comply with this standard.

(5) Personnel operating Type 1 or Type 2 engines assigned to structural protection shall carry structural firefighting ensembles for each firefighter on their assigned apparatus.

(6) Wildland personnel protective clothing shall not be used for interior structural firefighting.

(7) Personnel wearing full structural firefighting clothing while engaged in fighting wildland fires shall not expend more than one hour before rotating to rest and rehabilitation. Agencies may rotate crews to avoid the one-hour benchmark when containing and controlling wildland fires.

(8) Fire departments shall establish written procedures for the care, use, maintenance, and retirement criteria for wildland firefighting protective equipment in conjunction with the manufacturers' recommendations.

(9) Fire departments shall establish written procedures for the use of protective clothing and protective equipment while performing wildland firefighting activities.

(10) All wildland fire shelters purchased after the effective date of this rule must meet or exceed the United States Forest Services' Missoula Technology and Development Center (MTDC) design criteria and performance requirements for "new generation fire shelters."

#### NEW SECTION

**WAC 296-305-07014 Apparatus standards for wildland firefighting.** This section applies to wildland fire apparatus meeting the NIMS ICS typing of a Type 3 through Type 7 engine, and intended for use combating fires occurring in natural vegetation or occurring in natural vegetation and threatening improvements.

(1) In a wildland fire, an engine may provide the primary protection for a crew in the event of unexpected fire behavior or an action that places the engine crew in a position of being exposed to heat and smoke.

(2) Apparatus speed shall be determined to be safe if in the judgment of the officer in charge, the following are taken into consideration:

(a) The particular wildland fire attack methods being utilized including, but not limited to, the nature of the fire, the type of terrain, weather conditions, equipment conditions, and whether personnel are positioned in wildland firefighting enclosures;

(b) The forgoing provision shall not relieve a driver from the duty to drive with due regard for the safety of all persons in all conditions;

(c) Nor shall such provision protect the driver from the consequences of his/her reckless disregard for the safety of others.

(3) Because of the sheltering offered by an engine, the following minimum standards shall be complied with:

(a) The number of individuals working/assigned as an engine crew shall not exceed the manufacturer's cab capacity.

(b) Any time an engine is moved when not directly attacking a fire, personnel shall ride in the vehicle's enclosed cabin area, in a seat-belted location, or be off the vehicle.

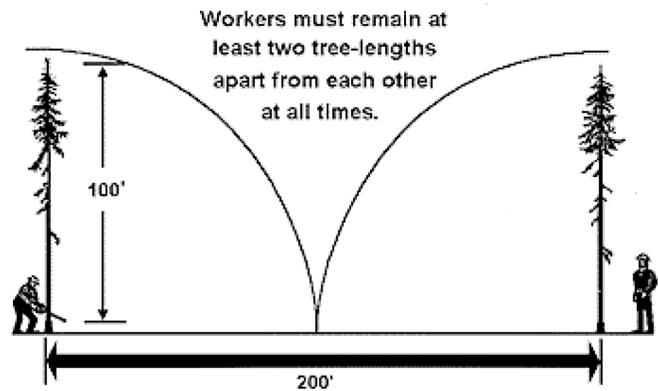
(c) Any time engines are used in a mobile attack configuration, and personnel other than the driver are on the apparatus, personnel shall ride in the manufacturer's enclosed cabin, or use the personnel restraints and enclosures identified in WAC 296-305-07018.

(d) All personnel working on or around engines in a ground mobile attack mode or in riding positions shall have visual or voice contact with the driver.

(e) Vehicles operating in smoke or dust shall have their headlights, and if so equipped, a flashing or rotating roof light illuminated.

#### NEW SECTION

**WAC 296-305-07016 Falling and equipment in forest lands.**



(1) The employer must assign work areas so that:

(a) Trees cannot fall into an adjacent occupied work area;

(b) The distance between work areas is at least two tree lengths of the trees being fell (see Figure 1: Distance Between Work Areas);

(c) The distance between work areas reflects the degree of slope, the density of the growth, the height of the trees, the soil structure and other hazards reasonably anticipated at the worksite; and

(d) A distance of more than two tree lengths is maintained between work areas on any slope where rolling or sliding of trees or logs is reasonably foreseeable.

**Exception:** This rule does not apply to a team of cutters working on the same tree.

(2) Before falling or bucking, conditions such as, but not limited to, the wind, the lean of tree, dead limbs, and the location of other trees, must be evaluated by the cutter and precautions taken so a hazard is not created for an employee.

(3) Employees must not approach a cutter closer than two tree lengths of trees being felled until the cutter has acknowledged that it is safe to do so.

(4) A competent person, properly experienced in this type of work, must be placed in charge of falling and bucking operations. Inexperienced workers must not be allowed to fall timber, buck logs or windfalls unless working under the direct supervision of an experienced cutter.

(5) Before an employee falls or bucks any tree:

(a) A sufficient work area must be swamped.

(b) The cutter must plan and clear an escape path.

(i) The escape path must extend diagonally away from the expected felling line unless such an escape path poses a greater hazard than an alternate escape path.

(ii) An escape path must be used as soon as the tree or snag is committed to fall, roll, or slide.

(6) If a cutter has determined a tree cannot be safely fell, the work must stop until the cutter has conferred with a supervisor or an experienced cutter and determined the safest possible work method or procedure.

(7) The person in charge of cutting crews must regularly inspect the work of the cutting crews and is responsible to ensure the work is performed in a proper and safe manner.

(8) All cutters must carry or have in near proximity at all times:

- (a) An axe or suitable tool for driving wedges.
- (b) A minimum of two wedges.
- (c) A first-aid kit.

(9) Where felled trees are likely to roll and endanger workers, cutting must proceed from the bottom toward the top of the slope, and uphill from previously fell timber.

(10) A cutter must not be placed on a hillside immediately below another cutter or below other operations where there is probable danger.

(11) Cutters must be informed of the movement and location of other employees placed, passing, or approaching the vicinity of trees being fell.

(12) Trees must be fell into the open whenever conditions permit.

(13) Domino falling of trees, including danger trees, is prohibited. Domino falling does not include the falling of a single danger tree by falling another single tree into it.

(14) Undercuts large enough to safely guide trees and eliminate the possibility of splitting must be used on all trees over six inches diameter at breast height.

(15) A cutter must place an adequate undercut and leave enough holding wood to ensure the tree will fall in the intended direction.

(16) The two cuts that form the undercut must not cross where they meet.

(17) The undercut must not be made while other workers are in an area into which the tree could fall.

(18) A backcut must be made in each tree being fell.

(a) The backcut must be as level as possible;

(b) The backcut must leave enough hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction; and

(c) The backcut must be above the level of the horizontal facecut to provide an adequate platform to prevent kickback.

(19) Trees with facecuts and/or backcuts must not be left standing unless all the following conditions are met:

(a) The cutter clearly marks the tree;

(b) Discontinues work in the hazardous area;

(c) Notifies all workers who might be endangered; and

(d) Takes appropriate measures to ensure that the tree is safely fell before other work is undertaken in the hazardous area.

(20) Undercuts and backcuts must be made at a height above the highest ground level to enable the cutter to safely begin the cut, control the tree, and have freedom of movement for a quick escape from a falling tree.

(21) Lodged trees must be clearly marked and identified by a predetermined method and all persons in the area must be instructed not to pass or work within two tree lengths of the trees except to ground them.

(22) On slopes over fifty percent grade, tree(s) must at least be quartered to a degree that prevents employees from being exposed to the possibility of sliding or rolling trees or logs.

(23) Each danger tree must be carefully checked for signs of loose bark, broken branches and limbs, or other damage before they are fell or removed. Accessible loose bark and other damage that may create a hazard for an employee

must be removed or held in place before falling or removing the tree. When a danger tree has elevated loose bark that cannot be removed, the buddy system must be used to watch for and give warning of falling bark or other hazards.

(24) Danger trees that are unsafe to cut must be blown down with explosives or fell by other safe methods.

(25) To avoid use of wedges, which might dislodge loose bark or other material, danger trees must be fell in the direction of lean unless other means (mechanical or dynamite) are used.

(26) All bosses and supervisors must survey their assigned work area for danger trees and mitigate them prior to crews commencing work in that area.

**Definition.**

*Danger trees: Any tree of any height, dead or alive, that presents a hazard to workers because of rot, root, stem or limb damage, lean, or any other observable condition created by natural process or man-made activity.*

(27) All fallers and faller bosses must be trained in the type of timber they will be falling prior to being assigned to a falling crew.

(28) All dozers, tractors, and similar machines in use where limbs or brush may injure the operator must be guarded as follows:

(a) Shear or deflector guards must be installed on each side of the vehicle at an angle leading forward and down from the top front edge of the canopy of the vehicle, which will tend to slide the brush or limbs up and over the top of the canopy.

(b) Open mesh material with openings of a size that will reject the entrance of an object larger than one and three-quarter inches in diameter, must be extended forward as far as possible from the rear corners of the cab sides to give the maximum protection against obstacles, branches, etc., entering the cab area.

(c) Deflectors must also be installed ahead of the operator to deflect whipping saplings and branches.

(d) Deflectors must be located so as not to impede entrance to or exit from the compartment area.

(e) The floor and lower portion of the cab must be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles which otherwise could enter the cab compartment.

(29) All dozers used on terrain that has sufficient slope or of such material as to hinder the movement of the dozer must have an attached winch or drum line that is in good working order. When such a situation is encountered, the dozer assistant must be knowledgeable in the operation of the dozer, winch or drum line operations, the hazards associated with winching or drum line operations, and line anchor selection.

(30) Operators must operate and control their machines in a safe manner and avoid operations in areas where machine stability may not be maintained.

(31) Employee work areas must be spaced and employee duties organized so the actions of one employee do not create a hazard for any other employee.

NEW SECTION

**WAC 296-305-07018 Occupant restraints and enclosures for wildland firefighting.** (1) While in motion, the driver and passengers in the cab shall wear seat belts.

(2) Seat belts shall comply with the U.S. Department of Transportation, Part 49 C.F.R., Section 571, Standards 209 and 210.

(3) Passengers on wildland vehicles shall use a safety belt or a short lanyard securely connected to the apparatus.

(a) Safety belts or lanyards shall be secured to an anchorage or structural member capable of supporting a minimum dead weight of one thousand five hundred pounds per person or a 4:1 safety factor.

(b) Safety lanyard lengths shall not allow for the firefighter to reach the ground.

(4) Safety belts shall be constructed and maintained in compliance with ANSI A10.14-1975.

(5) Lanyards shall be a minimum of one-half inch nylon or equivalent with a nominal breaking strength of five thousand four hundred pounds.

(6) The structural components for wildland vehicle enclosures shall be constructed of metal tubing not less than one inch in diameter, capable of supporting a minimum of one thousand five hundred pounds per person, a 4:1 safety ratio or the equivalent. This applies to vehicle enclosures manufactured after the effective date of this chapter.

(7) The enclosure shall be constructed to a minimum toprail height of forty-two inches and shall include a midrail and either a toeboard at least four inches high or a bottom rail a maximum of six inches from the platform.

(8) Access door(s) and latching mechanisms to tail board enclosures shall be constructed and mounted to achieve structural integrity comparable to the remainder of the enclosure.

(9) A strap or butt-bar utilized for the fourth side of the enclosure shall be a minimum of a four-inch nylon strap capable of supporting one thousand five hundred pounds dead weight.

(10) While actively fighting a fire in the mobile attack mode, firefighters shall either remain in a three-sided enclosure and use a safety lanyard, or remain in a four-sided enclosure.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-08000 Appendices.** These appendices are nonmandatory and are included to reference and information purposes only.

~~((Appendix A — Recommended cleaning procedures for protective turnout clothing and station uniforms.~~

~~(1) Protective clothing should be washed separately from other garments.~~

~~(2) Do not use chlorine bleach (sodium hypochlorite) as this will adversely affect the tear strength of your protective clothing and lessen its life. Oxygenated bleaches such as Liquid Clorox II, and Vivid may be used.~~

~~(3) Protective clothing may be spot treated or pretreated for hard to remove stains with products such as liquid Spray~~

~~and Wash, liquid Tide, liquid dishwashing detergent or liquid Shout.~~

**Note:** The use of brand names is intended only to indicate a type of cleaning agent. All products listed by name must be used in accordance with the manufacturer's recommendations. Use of a brand name does not constitute an endorsement nor does omission of a particular product brand imply that a product is inferior. Solvents should not be used as they lessen the life of the garment, reduce visibility on the trim, and degrade leather.

~~(4) When pretreating or spot treating a garment, apply the detergent onto the soiled area. Gently rub the fabric together until a light foam appears on the surface. Use a soft bristle brush (toothbrush type) and scrub the area for about one and one-half minutes. Reapply liquid detergent onto the soiled area and place the garment into the washing machine.~~

~~(5) When cleaning turnout clothing the garment should be turned inside out, the hooks and dees fastened, the liner removed, and the garment placed in a laundry bag. These instructions can be used for cleaning any wash loads in a large capacity (sixteen gallon) top loading or front loading machine. Load the machine with any one of the following combinations — do not overload:~~

~~(a) One protective coat and one pair of trousers.~~

~~(b) Two protective coats.~~

~~(c) Two protective pair of trousers.~~

**Note:** Heavily soiled garments should be treated as outlined in (4).

~~(6) While the washing machine is filling with hot water (temperature between 120 degrees F and 130 degrees F), add one-half cup (four ounces) of liquid oxygenated bleach and one cup (eight ounces) of liquid detergent.~~

~~(a) Fill washing machine to highest water level,~~

~~(b) Add garments to be washed,~~

~~(c) Set washing machine for normal cycle, cotton white, or similar setting.~~

~~(d) Machines should be programmed for a double rinse. If the machine will not automatically double rinse, a complete second cycle can be run without adding detergent or oxygenated bleach. Double rinse helps remove any residual dirt and ensures detergent removal.~~

~~(e) Remove garments from washing machine when done and dry by hanging in a shaded area that receives good cross ventilation, or hang on a line and use a fan to circulate air. A water extractor may be utilized.~~

~~(f) After the garments have been removed, run the laundry machine empty or with a dummy (rag) load with detergent at least once, but preferably several times to purge the machine of any residue.~~

~~(7) Inspect and examine the trim as to the effectiveness of the trim performance under daytime and nighttime conditions. It is important that a high visibility be maintained at all possible orientations to the light source.~~

~~(8) The above procedures can be used for any article of clothing issued that is not contaminated with bloodborne pathogens or any other infectious disease. For clothing exposed to hazardous materials, consult the manufacturer or the appropriate decontamination document.~~

~~(9) Procedure for clothing (except wool clothing) that has been exposed to bloodborne pathogens or infectious diseases:~~

~~(a) Disposable gloves should be used when handling contaminated clothing.~~

~~(b) Each station should have an area designated for the cleaning of equipment. The area designated should not be near kitchen, living, sleeping, or personal hygiene areas.~~

~~(c) Contaminated clothing should be handled as little as possible with a minimum of agitation. Contaminated clothing should be cleaned as soon as possible. When the on-coming shift has to clean contaminated clothing for the off-going shift, all contaminated clothing should be stored in red biohazard bags, properly sealed to prevent the spread of potential contamination.~~

~~(d) To clean clothing that has been contaminated, a germicidal detergent should be used. Such germicidal should be EPA approved and effective as staphylocidal, pseudomonacidial, virucidal, and fungicidal detergent.~~

~~(e) The germicidal detergent is intended to be a complete disinfecting and cleaning agent when mixed according to the manufacturer's directions. Do not add any chemical or detergent to the germicidal solution. After the clothing has been disinfected the clothing should be washed as outlined under normal use.~~

~~(f) Wool uniforms should be spot cleaned, placed in the red biohazard bags and sent to an industrial laundry for cleaning.~~

~~(10) Helmets, gloves, hoods, and boots should be cleaned as follows:~~

~~(a) Pre-clean using a germicidal solution and scrub all contaminated areas with a soft bristled brush. Rinse with clean water. Dispose of the pre-cleaning solution by pouring it down the drain in the cleaning area.~~

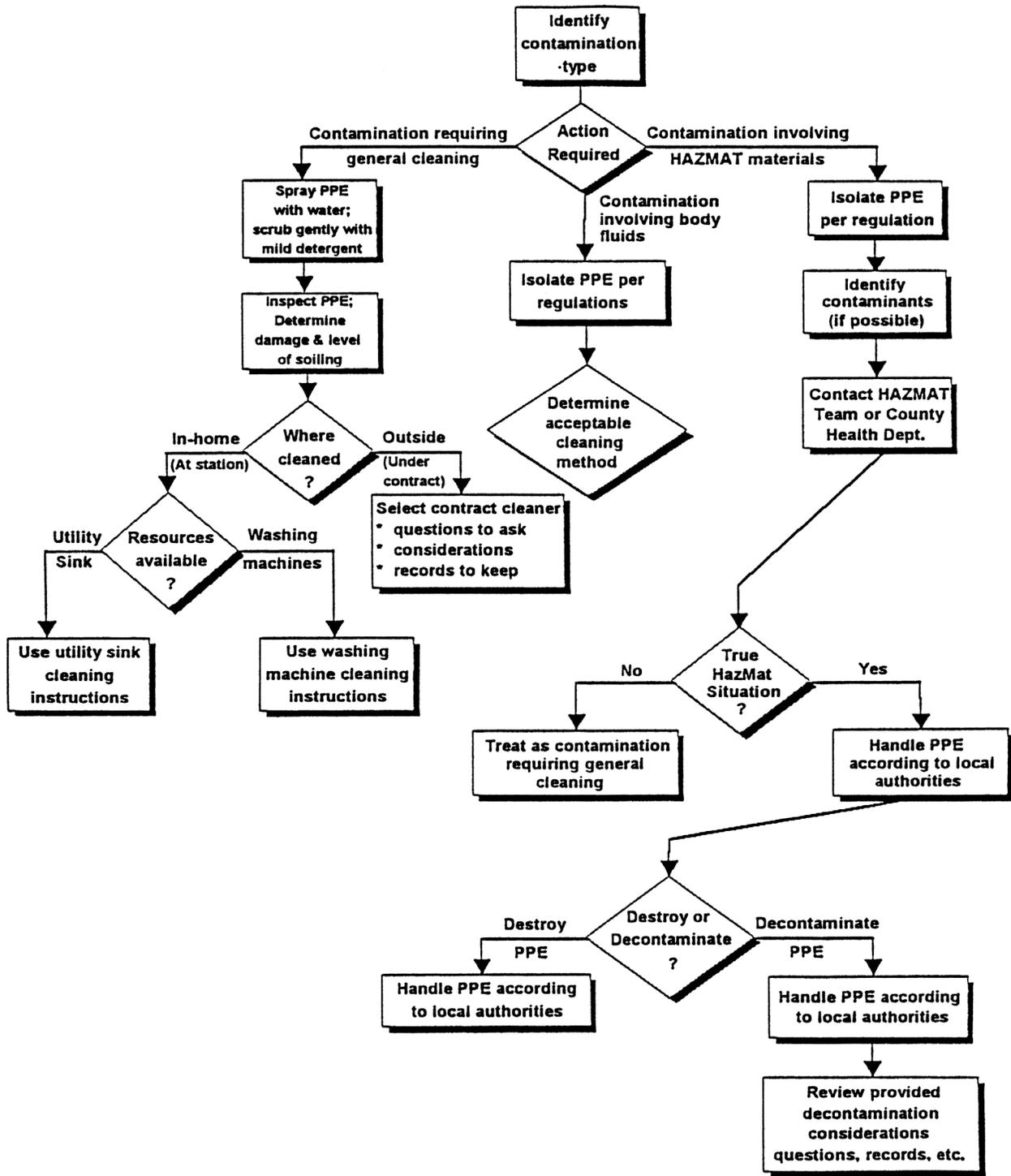
~~(b) Using a fresh germicidal solution, repeat the above procedure allowing the areas to remain wet for a minimum of fifteen minutes. Double rinse with clean water and air dry. Dispose of the solution by pouring it down the drain in the cleaning area.~~

~~(c) For gloves, use a third fresh water rinse, squeezing and rinsing several times. Dispose of the solution by pouring it down the drain in the cleaning area.~~

~~(11) Front loading industrial laundry machines are designed for the type of cleaning required for protective clothing. Machines are available from Milnor, Model 30015C6M-AAC, for washing; or a Huebseh Originator, Model 3705H, for a dryer.~~

**Note:** The use of brand names is intended only to indicate a type of cleaning equipment. All products listed by name must be used in accordance with the manufacturer's recommendations. Use of a brand name does not constitute an endorsement nor does omission of a particular product brand imply that a product is inferior.))

((STRICKEN GRAPHIC



PPE Cleaning and Decontamination Decision-Making Process

STRICKEN GRAPHIC))

Appendix B — Life safety ropes. (1) Life safety rope may be significantly weakened by abrasion, misuse, contamination, wear, and stresses approaching its breaking strength,

particularly impact loading. Since there are no approved methods to service test a rope without compromising its strength, rope rescue and training operations should be care-

fully observed and monitored for conditions that could cause immediate failure or result in undetectable damage to the rope.

(2) If a rope has been used in a situation that could not be supervised or where potential damage may have occurred, it must be removed from service and destroyed.

(3) It is important that ropes be inspected for signs of wear by qualified individuals after each use. If indication of wear or damage are noted, or if the rope has been stressed in excess of the manufacturer's recommendation or impact loaded, it must be destroyed.

(4) The destruction of the rope means that it must be removed from service and altered in such a manner that it could not be mistakenly used as a life safety rope. This alteration could include disposing of the rope, or removal of identifying labels and attachments, and cutting the rope into short lengths that could be used for utility purposes.

(5) The assignment of "disposable" life safety ropes to members or to vehicles has proved to be an effective system to manage ropes that are provided for emergency use and are used infrequently. Special rescue teams, which train frequently and use large quantities of rope, should include members who are qualified to manage and evaluate the condition of their ropes and determine the limitations upon their reuse.

Appendix C — Decontamination. (1) A decontamination area should be established whenever civilians or fire department personnel have had known or suspected exposure to toxic chemicals.

(2) Such decontamination areas should be established before any personnel are allowed to enter the "Hot" zone.

(3) The decontamination area should be set up using the following guidelines:

(a) The decontamination area should be located uphill, upwind and at a right angle to the "Hot" zone.

(b) The decontamination area entry/exit point and boundaries should be clearly marked using flagging tape, ropes, cones, etc.

~~((3))~~ ~~Visqueen~~ (4) 4 to 6 mil poly sheeting should be spread on the ground in the decontamination area to control runoff.

~~((4))~~ (5) The decontamination process is divided into stations. In most cases it will not be necessary to utilize all the stations. The decision to use all or part of the stations should be based on the following factors:

(a) The hazards associated with the product involved.

(b) The estimated levels of contamination.

(c) The type of protective equipment worn by contaminated responders.

(d) Recommendations from outside sources such as, but not limited to CHEMTREC, the agency for toxic substance and disease registry, poison control centers or the manufacturer of the product.

~~((5))~~ (6) The following is a list of all the stations in a nine-step decontamination area set up for a worst case scenario involving a hazardous materials response team member whose chemical suit has been breached:

(a) Station #1 - Segregated equipment drop: Contaminated equipment that will be used again in the "Hot" zone, disposed of, or decontaminated at a later time or place, will be deposited here.

(b) Station #2 - Wash/rinse: Entry personnel will be washed with appropriate decontamination solution and rinsed with water by attendant(s) to remove gross contamination. This station may consist of multiple wash/rinse steps depending on the severity of the hazards involved.

(c) Station #3 - Outer protective clothing removal: Attendant(s) will remove the outer protective clothing from entry personnel being cautious to avoid touching the inside of the suit while removing it. Protective clothing that has been removed at this step shall be placed in an overpack or other appropriate container for later testing and further decontamination, if needed.

(d) Station #4 - Removal of SCBA: The entry personnel are assisted in removing their SCBA by an attendant. The SCBA facepiece should be left in place and the low pressure hose held away from any potentially contaminated inner clothing.

(e) Station #5 - Removal of inner clothing: All clothing worn inside the suit must be removed in cases where the suit has been penetrated and the entry personnel are contaminated.

(f) Station #6 - Personal shower: Entry personnel should wash and rinse entire body with mild soap and water. Contain runoff water if possible, however this is an emergency situation and containment is secondary to removing contaminants from personnel.

(g) Station #7 - Drying off: Entry personnel that have showered should dry off using towels or whatever is available. Items used should be placed in an appropriate container for disposal. Emergency clothing such as disposable coveralls should be provided.

(h) Station #8 - Medical evaluation: Entry personnel should be evaluated by paramedics - checking vital signs including temperature and level of consciousness. Records of the evaluation must be kept and given to the team safety officer to be included in the members exposure records.

(i) Station #9 - Transport to emergency room: Any personnel exhibiting any signs or symptoms of exposure should be transported to the emergency room for evaluation and observation.

~~((6))~~ (7) The hazardous materials response team van should carry premeasured packets of decontamination solution mixes for the purpose of decontaminating chemical protective clothing and other equipment at the scene of a hazardous materials emergency. These solutions are not to be used to decontaminate turnouts or exposed skin under any circumstances.

~~((7))~~ (8) The primary solution used will be a simple detergent and water mixture. Other special decontamination solution mixes will only be used in those situations when it is determined that the detergent and water solution is inappropriate.

~~((8))~~ (9) Contaminated civilians that are exhibiting signs or symptoms of exposure should be treated as patients. Due to the risk of secondary contamination, all patients should undergo emergency field decontamination at the scene before being evaluated by medical personnel or being transported to the emergency room. Medical personnel should not accept any patient that has not been grossly decontaminated.

((9)) (10) The emergency field decontamination process should consist of removing the clothing from all affected body parts of the exposed person and flushing with copious quantities of water from a garden hose or low pressure one and three-quarter inch handline to remove gross contamination. Patients will be flushed for up to fifteen minutes, depending on the material recommendations on patient decontamination.

((10)) (11) Members performing patient decontamination should wear, at a minimum, full turnouts and SCBA and should avoid splashes and overspray to the extent possible. They should also undergo decontamination when they have finished decontaminating the patient.

((11)) (12) Containment of the runoff water from patient decontamination is not required. Do not delay decontamination of patients to set up containment. However, some form of privacy screen should be erected to protect the modesty of those being decontaminated.

((12)) (13) Responders that are contaminated in the process of performing rescue or other tasks will, at the minimum, be flushed with water for a minimum of one minute. Further flushing will be performed depending on the extent of contamination and subsequent adverse health effects.

((Appendix D—Wildland Firefighting Equipment Typings:

	PUMP RATE GPM-MINIMUM	TANK CAPACITY-IN GALLONS
PUMPER/BRUSH ENGINE:		
ICS Type 7	20	125
ICS Type 6	50	200
ICS Type 5	50	500
ICS Type 4	70	750
ICS Type 3	120	300
PUMPER/CLASS A RATED:		
ICS Type 2	500	400
ICS Type 1	1000	400

Ten standard fire orders

Fight fire aggressively but provide for safety first.

Initiate all action based on current and expected fire behavior.

Recognize current weather conditions and obtain forecasts.

Ensure instructions are given and understood.

Obtain current information on fire status.

Remain in communication with crew members, your supervisor, and adjoining forces.

Determine safety zones and escape routes.

Establish lookouts in potentially hazardous situations.

Retain control at all times.

Stay alert, keep calm, think clearly, act decisively.

Four common denominators of tragedy fires

1. Small fires or relatively quiet sectors of large fires.
2. Light fuels.
3. Steep slopes.
4. Change in wind speed and/or direction.

"Watch-Out" Situations

1. Fire not scouted and sized up.
2. In country not seen in daylight.
3. Safety zones and escape routes not identified.
4. Unfamiliar with weather and local factors influencing fire behavior.
5. Uninformed on strategy, tactics and hazards.
6. Instructions and assignments not clear.
7. No communication link with crew members or supervisor.
8. Constructing line without safe anchor point.
9. Building fire line downhill with fire below.
10. Attempting frontal assault on fire.
11. Unburned fuel between you and fire.
12. Cannot see main fire, not in contact with someone who can.
13. On a hillside where rolling material can ignite fuel below.
14. Weather becoming hotter and drier.
15. Wind increases and/or changes direction.
16. Getting frequent spot fires across line.
17. Terrain and fuels make escape to safety zones difficult.
18. Taking nap near fire line.

National Wildlife Coordinating Group Firefighter II Performance Tasks

1. Agency policy for wildfires.
2. Extended attack fire orientation and dispatch.
3. Inmate orientation.
4. Fire line organization.
5. Tools and equipment.
6. Firing devices.
7. Wildland water delivery systems and pump use.
8. Introduction to wildland fire behavior.
9. Fire line safety.
10. Size up and initial attack.
11. Fire line construction.
12. Wildland fire investigation.
13. Structure protection.
14. Use of foam.
15. Mop up.
16. Compass use.
17. Map use.
18. Radio communications.
19. Incident command system.
20. Basic first aid.
21. Hazardous materials awareness.))

Appendix D

**Guidelines for Managing Two-in/Two-out**

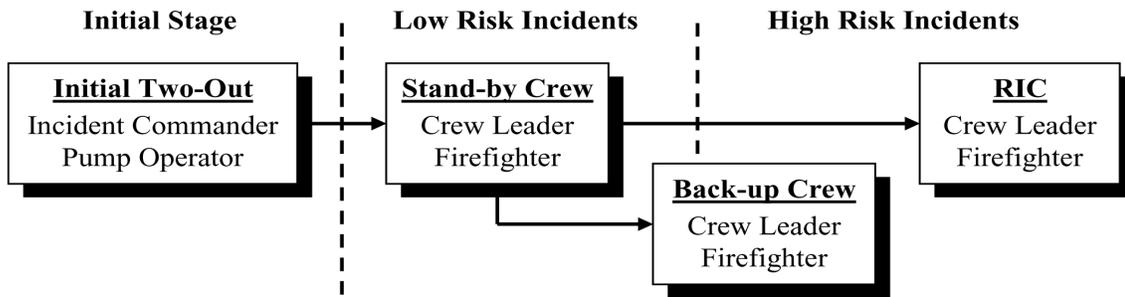
**Rapid Intervention (Two-in/Two-out)**

Incident Commanders must maintain rapid intervention capability (Two-out) so that, should the need arise, a rescue crew is readily available to provide for the rescue of any responders operating within a hazard area (Two-in). A hazard area is defined as any area that requires the use of PPE or in which a responder is at risk of becoming lost, trapped, or injured by the environment or structure. This includes entering a structure reported to be on fire, operating in close proximity to the structure during exterior operations, confined space operations, rope rescue, haz-mat, etc.

Rapid Intervention is the **systematic management** of response to a “Mayday” situation where the need for an immediate rescue of emergency responders has become necessary.

**Responsibility** – Incident Commanders are ultimately responsible for the incident outcome and the safety of all responders operating at the scene. Therefore, Incident Commanders must maintain a constant balance between the urgent need to perform critical tasks and the personal safety of the responders performing those tasks. To support this, and before responders can be assigned to operate within a hazard area, Incident Commanders must establish a two-out resource capable of providing rapid intervention. Incident Commander must maintain this capability throughout the incident until the risk to responders has been sufficiently mitigated.

**Providing Two-Out Capability** – The methods for providing Two-out should match the incident’s degree of potential risk and can evolve as resources become available. The following flowchart provides a decision-making guideline, illustrating a model sequence for determining how, and to what extent. Two-out capability should be provided so that it corresponds with the incident stage, size, complexity, and level of risk to responders.



For high risk incidents, a RIC should be assigned, given time to prepare, while the Stand-by Crew provides two-out. Once ready, the RIC replaces the Stand-by Crew who can move up to Back-up.

**Two-Out Staffing Options**

**Initiating Two-out** – During the “Initial Stage” of an incident, the two-out provision may be provided as a secondary responsibility by the Pump Operator and the Incident Commander.

The “Initial Stage” of an incident is defined as the stage that encompasses the tasks undertaken by the first arriving company with only one crew assigned or operating in the hot zone.

Once a second crew is assigned to operate within the hazard area, the incident is no longer in the “Initial Stage”. With multiple crews operating in a hazard area, the Incident Commander and Pump Operator’s ability to realistically function as an effective two-out rescue crew drastically diminishes. At this point, the Incident Commander shall assign a dedicated crew of two-out, which may be in the form of a Stand-by Crew or a RIC.

**The IC and Pump Operator can only initiate Two-out during the Initial Stage**

**Stand-by Crew** - A Stand-by Crew is assigned when the Incident Commander opts not to assign a RIC Crew. This would be done as a short term assignment for incidents that can be quickly and safely mitigated because they are contained, limited to contents, and are of minimal risk to responders. Examples include a smoldering mattress, an appliance fire, or a stovetop fire.

**Standby Crews are assigned as a short term two-out provision for low risk incidents**

A Stand-by Crew can also be assigned as an interim step while waiting for a RIC to arrive and/or assemble. A Stand-by Crew consists of at least two firefighters held outside the hazard area, available for immediate assistance or rescue of an entry crew. Once relieved by a RIC, the Stand-by Crew may be assigned to become a Back-up Crew.

**Rapid Intervention Crew (RIC)** – Functionally synonymous to a Stand-by Crew, a RIC is assigned for high risk incidents involving sustained operations to replace the Stand-by Crew. A RIC consists of at least two firefighters held outside the hazard area available for immediate assistance or rescue of an entry crew operating within the hazard. It must be recognized that a RIC alone may not be adequate when it comes to actually conducting a rescue of a trapped firefighter. Therefore, it must be understood that the primary role of a RIC is only to initiate the rescue effort.

**RIC should be assigned to replace the Stand-by Crew during high risk incidents**

- The primary role of a Stand-by Crew or RIC is to:
1. **Locate** and gain access to the firefighter in peril;
  2. Provide them with **emergency air** management; and to
  3. Provide **reconnaissance** information to the Incident Commander for the coordination of additional crews assigned to support the rescue effort. **Rescue if able.**

**RIC effectiveness is limited to only reacting to a rescue situation**

**Back-up Crews**

Back-up Crews are strategically pre-positioned in the immediate vicinity of crews operating in areas with a high level of risk. A pre-positioned back-up crew is the most familiar with the other crew’s location, situation, the hazards they are exposed to, and the immediate surroundings. A back-up crew’s placement also positions them to better recognize a potential or developing “Mayday” situation, enabling them to immediately intervene, thus averting a “Mayday” situation.

**Back-up Crews provide protection because they are positioned in a manner that allows them to initiate actual intervention**

Back-up Crews are intended to provide a crew of at least two members positioned offensively with a charged hose line and/or other applicable equipment. Back-up Crews operate with three given priorities. In coordination with the Incident Commander and in order of priority, they are assigned for the specific purpose of:

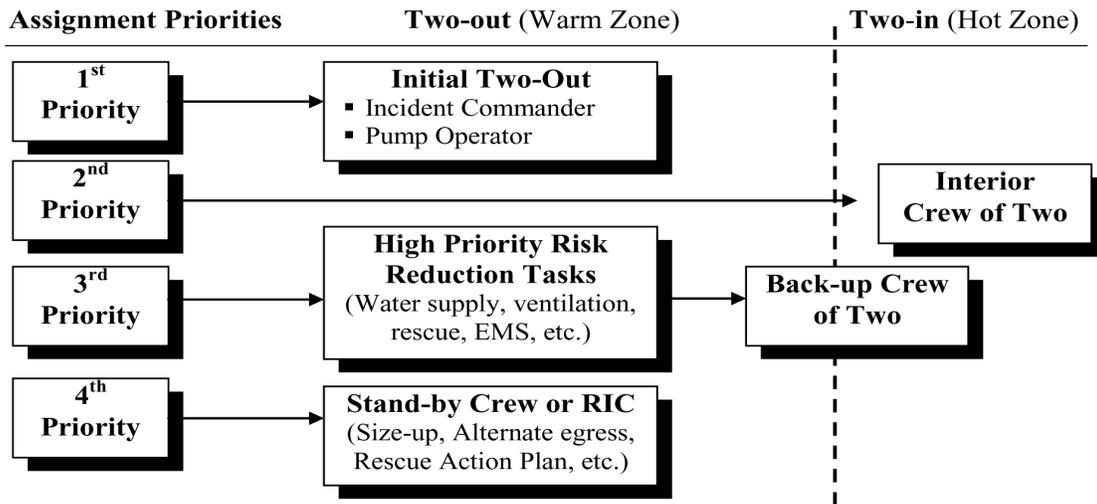
1. As dictated by fire and/or other hazardous conditions, protecting the means of egress for interior crews;
2. Serving as the Incident Commander’s eyes and ears specifically to assess conditions within the Hot Zone, conveying risk assessment reconnaissance information to the Incident Commander, monitoring conditions, and if conditions begin to deteriorate, immediately initiating the appropriate form of intervention;
3. If priorities 1 and 2 are accounted for, conducting a primary search, or supplement initial fire attack efforts.

Although protecting egress is the Back-up Crew’s primary responsibility, they may also support entry crews with hose advancement, victim removal, monitoring fire extension, etc.

As a general guideline, Back-up Crews are assigned with the following progression:

- If an entry crew is assigned to enter the hazard area, a Stand-by Crew or RIC must also be assigned as the two-out provision for providing rapid intervention capability.
- If a RIC has been assigned, the Stand-by Crew can move up to become the Back-up Crew.

**Deployment Order of Priority (Structure Fire Example)** – Though maintaining Two-in/Two-out is a requirement, how the Incident Commander chooses to do so is flexible. The following flowchart provides a decision-making guideline for planning tactical assignments while maintaining Two-in/Two-out. The following sequence is intended to guide crew deployment in a manner that balances the need to initiate and establish a Two-out crew while also assigning crews to critical incident mitigation tasks within the hazard area.



**Adjacent and Additional Crews**

Case studies prove that a Stand-by Crew or RIC operating alone may not be sufficient when rescuing a trapped firefighter when extrication and/or rescue are required. Rescue efforts will likely require the support of additional crews to provide extrication equipment and rescue personnel. To create these supporting crews the Incident Commander can reassign adjacent crews or assign additional crews, generally a combination of the two.

**Adjacent Crews** – When a crew declares a “Mayday”, the rescue efforts initiated by other crews operating in close proximity is nearly as effective as what a back-up crew can provide. Adjacent crews may be in a position to suspend their current assignment and immediately initiate rescue efforts. But if an adjacent crew is performing an activity that will protect rescue efforts, they should not be re-assigned if suspending their current assignment would potentially compromise this protection. Re-assignment of adjacent crews does not preclude the deployment of the Stand-by Crew or RIC. The primary role of the Stand-by Crew or RIC is to locate the firefighters in peril, provide them with emergency air management, and to facilitate their rescue.

**Crews must not self-dispatch!**

**Additional Crews** – When a crew declares a “Mayday, Mayday, Mayday”, additional crews can be assigned by the Incident Commander to support rescue efforts or to replace adjacent crews who were re-assigned to the rescue effort. Additional crews will generally be deployed from a staging area.

**Resource Reserve** – Incident Commanders should maintain a reserve of resources so that if a rapid intervention must be initiated, they have enough resources to support the rescue effort while continuing to sustain the original incident operations. Often this means calling for additional resources, second, or third alarms. Early consideration should be given to assure these reserve resources are on scene and available when needed.

Appendix E—Standard apparatus operation communications.

When firefighters ride in the tiller's seat or other remote location, an electrical signal or voice communication should be installed between the tiller's seat, work station, and driver's compartment.

(1) These signals should be used between the driver and the firefighters:

- (a) One long buzz means stop;
- (b) Two buzzes mean forward;
- (c) Three buzzes mean reverse.

(2) Before any of the above functions are undertaken, with the exception of stopping, the same signal must be both sent and received. The driver should not act without sending and receiving a confirming signal.

(3) When using hand signals, these signals are as follows:

**STOP**

Hold hand to the side, shoulder high, exposing palm to the driver. At night, hold hands in the same manner, with the addition of a flashlight in one hand (~~shining~~) shining at the driver. This will indicate an immediate STOP.



STOP

Hold hand to the ~~((die))~~ side, shoulder high, exposing palm to the driver. At night, hold hands in the same manner, with the addition of a flashlight in one hand shining at the driver. This will indicate an immediate STOP.

**RIGHT OR LEFT**

Point in the desired direction with one hand and motion in a circular "come-on" gesture with the other hand at the chest level. At night direct a flashlight beam at the hand pointing in the desired direction.



RIGHT OR LEFT

Point in the desired direction with one hand and motion in a circular "come-on" gesture with other at the chest level. At night, direct a flashlight beam at the hand pointing in the desired direction.

DIMINISHING CLEARANCE

Hold the hands to one side of the body indicating the approximate amount of distance the apparatus is from the obstacle. Close hands accordingly as the driver slowly maneuvers the apparatus to point where the signal indicates immediate STOP. Always allow enough for drivers reaction time.

At night, indicate in the same manner with the flashlight in the upper hands and beam directed at the palm of the other. On STOP, cover the flashlight beam with the hands.



DIMINISHING CLEARANCE

Hold the hands to one side of the body indicating the approximate amount of distance the apparatus is from the obstacle. Close hands accordingly as the driver slowly maneuvers the apparatus to point where the signal indicates immediate STOP. Always allow enough for divers reaction time. At night, indicate in the same manner with the flashlight in the upper hands and beam directed at the palm of the other. On STOP, cover the flashlight beam with the hands.

AHEAD OR ((BACK-UP)) BACK UP

Hold hand directly in front, chest high, fingers on hands directed toward one another, and motion in a circular "come-on" gesture. At night hold a flashlight in one hand and direct the beam toward the other.



AHEAD OR BACK UP

Hold hand directly in front, chest high, fingers on hands directed toward one another, and motion in circular "come-on" gesture. At night hold a flashlight in one hand and direct the beam toward the other.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-305-01002 Effective date.
- WAC 296-305-01009 Appeals.
- WAC 296-305-02003 Eye and face protection.
- WAC 296-305-02005 Hearing protection.
- WAC 296-305-02007 Hand protection.
- WAC 296-305-02009 Body protection.
- WAC 296-305-02011 Body armor.
- WAC 296-305-02013 Foot protection for structural firefighting.
- WAC 296-305-02015 Head protection.
- WAC 296-305-03001 Hazardous materials protection.
- WAC 296-305-04509 Aerial ladders.
- WAC 296-305-04511 Elevated platforms.
- WAC 296-305-05001 Emergency fireground operations—Structural.
- WAC 296-305-05003 Confined space rescue operations.
- WAC 296-305-05005 Rope rescue operations.

WAC 296-305-05007	Trench rescue operations.
WAC 296-305-05009	Watercraft rescue operations.
WAC 296-305-05011	Hazardous materials operations.
WAC 296-305-05501	Fire training.
WAC 296-305-05503	Summary of training requirements.
WAC 296-305-06005	Ground ladders.
WAC 296-305-06007	Electrical.
WAC 296-305-07003	Personal protective clothing and equipment for wildland firefighting.
WAC 296-305-07005	Respiratory protection for wildland firefighters.
WAC 296-305-07007	Wildland personnel accountability.
WAC 296-305-07009	Apparatus standards for wildland firefighting.
WAC 296-305-07011	Occupant restraints and enclosures for wildland firefighting.
WAC 296-305-07013	Equipment for wildland firefighting.
WAC 296-305-07015	Aircraft operations for fighting wildland fires.
WAC 296-305-07017	First aid for wildland firefighters.
WAC 296-305-07019	Training for wildland firefighting.

**WSR 12-17-120**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 21, 2012, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-07-070.

Title of Rule and Other Identifying Information: Chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): Center Place Regional Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on September 26, 2012, at 10:00 a.m.; and at the Labor and Industries Building, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on September 28, 2012, at 9:00 a.m.

Date of Intended Adoption: October 15, 2012.

Submit Written Comments to: Tim Smolen, P.O. Box 44180, Olympia, WA 98504-4180, e-mail Tim.Smolen@lni.wa.gov, fax (360) 902-4258, by 5:00 p.m. on September 28, 2012.

Assistance for Persons with Disabilities: Contact office of information and assistance by September 21, 2012, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is being proposed to make necessary changes in the retrospective rating rules following passage of EHB 2123 (chapter 37, Laws of 2011), specifically Part 1, creating the Washington stay-at-work program, and Part 3, claim resolution structured settlement agreements; and ESHB 1725 (section 3, chapter 290, Laws of 2011), concerning retrospective rating employers who pay for direct care providers for their injured workers. The department will also make other small house-keeping changes for clarification.

Reasons Supporting Proposal: Legislation passed in the 2011 session has direct impact on the retrospective rating (retro) program. This rule package provides clarity about how that legislation will affect retro participants, and updates and corrects several sections.

Statutory Authority for Adoption: RCW 51.04.020, 51.16.035, 51.16.100, 51.18.005, and 51.18.010(2).

Statute Being Implemented: RCW 51.18.010 and 51.04.020.

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: Diane Doherty, Tumwater, (360) 902-5903; Implementation: Tim Smolen, Tumwater, (360) 902-4835; and Enforcement: Beth Dupre, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. 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) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

August 21, 2012

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-010 Introduction and overview.** Retrospective rating (retro) is a voluntary financial incentive program offered by the department of labor and industries to encourage improvements in workplace safety.

Chapter 296-17 WAC defines the standard method for determining the price of workers' compensation insurance for

employers insured with the state fund. All employers insured with the state fund must pay the accident fund, medical aid fund, and supplemental pension fund premiums established in that chapter.

Employers who participate in retrospective rating bind themselves to the rules of the retrospective rating program found in this chapter. Under these sections, a participant's ultimate cost of workers' compensation insurance will be different than under chapter 296-17 WAC.

Employers participate in retrospective rating because it creates an opportunity to earn refunds of premiums they are required to pay under chapter 296-17 WAC. However, participation involves risk: Participants not successful in controlling losses can be assessed additional premiums.

Employers control losses by preventing workplace illnesses and injuries, and helping injured workers return to work.

Employers that participate in retro can enroll either individually or as members of a sponsored group. Enrollment is for a one-year coverage period, but it is possible for employers to join a sponsored group after the group's one-year coverage period has begun, at the beginning of a calendar quarter.

After a coverage period is over, the department evaluates premiums and claims losses and determines retro premiums according to these rules. If a retro group's or an individually enrolled employer's retro premiums are less than the standard premiums paid initially, that firm or group will receive a refund. If the retro premiums are more than the standard premiums initially paid, the firm or group will be assessed the additional amount. Calculation of retrospective premiums is defined further in this chapter. The department goes through this annual adjustment process three times for each coverage period.

The department will repeat the studies that resulted in the hazard group assignments and changes to retrospective plan tables that are shown in WAC 296-17-901, 296-17B-300, 296-17B-560, 296-17B-830, and 296-17B-910 through 296-17B-990. The repeated studies will determine whether the results are consistent with the expectation of improved fairness in the distribution of the retrospective rating refunds among participants. These repeated studies will be done by ~~((March 1, 2012))~~ April 1, 2014.

The department will evaluate and if necessary update the tables beginning at WAC 296-17B-910 every five years.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-500 Determining your standard premiums.** Employers are required to pay accident fund, medical aid ~~((;))~~ stay-at-work and supplemental pension fund premiums according to chapter 296-17 WAC. ~~((Partial payments of premiums are applied first to the liability to the supplemental pension fund, then to the medical aid fund, and finally then to the accident fund.))~~ Standard premiums are the premiums an employer pays to the accident and medical aid funds under chapter 296-17 WAC for employment during the coverage period, and do not include either stay-at-work or supplemental pension fund premiums.

For an employer enrolled in a group after the start of a group's coverage period, we will only consider the employer's standard premiums for the calendar quarters for which the employer was enrolled.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-520 Determining your losses.** We determine your losses at the time of an adjustment.

To determine your losses, we first determine the case incurred losses for your claims. To these, we apply discounted loss development ~~((; discount))~~ and expected loss ratio factors and your single loss occurrence limit to determine your losses incurred for each claim, as explained in these rules. The sum of your losses incurred will be your loss incurred, unless your maximum or minimum loss ratios apply.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-530 Determining case incurred losses.** If a claim is closed, we will use the actual losses for the claim as defined in WAC 296-17-870(1). If the claim is open, we will use either the case reserve amounts or the actual losses, whichever are higher.

Where not in conflict with these rules, we will use the rules for valuing claims for experience rating found in WAC 296-17-870 (1), (5) through (7), and (10) through (12).

Employer reimbursements from the Washington stay-at-work program will not be included in the case incurred costs of claims.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-720 Prohibited conduct.** (1) Employers and group sponsors must not engage in claims suppression as defined in RCW 51.28.010(4).

(2) Employers and group sponsors must not pay medical service providers for medical services related to an industrial injury or occupational disease. Payment of monthly direct fees made on behalf of employees to qualifying direct primary care service providers as permitted by RCW 48.150.050 does not disqualify an employer or group sponsor from participation in the retrospective rating program.

(3) Unless disclosed to the member at the time of enrollment, group sponsors must not require members to pay dues, fees, or continue membership in the retrospective rating program beyond the last date of the coverage year in order to receive their share of refunds, if any.

If we determine that you have violated any of these provisions, we will remove you from retrospective rating effective the date we notify you, and permanently bar you from further participation in the retrospective rating program. You will remain liable for any additional premium assessments related to your participation prior to your removal, but you will forfeit any right to refunds for adjustments calculated after your removal.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-810 Discounted loss development factors.** At the time of adjustment, our actuaries determine discounted loss development factors by claim type. Loss development factors account for the fact that claims ultimately cost the state fund more than they have cost the state fund to date, and more than they are estimated to cost the state fund at any particular point in time.

Discounting accounts for the fact that benefits are not paid at once, but rather are paid over a period of time. Discounts vary for different types of claims based on when benefits tend to be paid.

Separate discounted loss development factors will be calculated by fund and also by enrollment period at the time of each annual retrospective rating adjustment.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-830 Expected loss ratio factors.** The expected loss ratio factor is a factor applied to case incurred loss amounts of claims and discounted loss development factors (~~(and discount factor)~~) so that the ratio of discounted developed loss to standard premiums for the entire state fund used in the actuarial calculations equals the expected loss ratios. By doing this, loss ratios will not be expected to change simply because the department changed the rates for one fund significantly more than the rates for another fund. The expected loss ratios are:

Accident Fund	81.2%
Medical Aid Fund	88.0%

Separate factors will be calculated by fund and also by enrollment period at the time of each annual retrospective rating adjustment.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

**WAC 296-17B-840 Claim types.** The following claim types are considered when calculating the discounted loss development factors (~~(and discount factors)~~):

- (1) Fatality;
- (2) Total permanent disability pension claim;
- (3) Structured settlement claim with ongoing, lifetime payments:
- (4) Structured settlement claim with fixed, periodic payments:
- (5) Structured settlement claim with one-time, lump sum payments:
- (6) Permanent partial disability claim;
- ~~((4))~~ (7) Time-loss claim;
- ~~((5))~~ (8) Miscellaneous accident fund claim;
- ~~((6))~~ (9) Medical only claim.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17B-820 Discount factors.

**WSR 12-17-121**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed August 21, 2012, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-095.

Title of Rule and Other Identifying Information: Amending chapter 296-20 WAC, Medical aid rules. SSB 5801 (chapter 6, Laws of 2011) amends RCW 51.36.010. SSB 5801 directs the department of labor and industries (L&I) to establish a health care provider network to treat injured workers of employers insured with L&I and of self-insured employers and to expand the centers for occupational health and education (COHEs). Rules are necessary to implement the changes required in SSB 5801. This third rule-making phase is proposed to ensure that existing department rules do not conflict or create confusion with the network implementation.

Hearing Location(s): Department of Labor and Industries Tumwater Building, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on September 28, 2012, at 3 p.m.

Date of Intended Adoption: November 13, 2012.

Submit Written Comments to: Jami Lifka, Department of Labor and Industries, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98501 OR e-mail Jami.Lifka@Lni.wa.gov OR fax (360) 902-6315 and received no later than 5 p.m. September 28, 2012.

Assistance for Persons with Disabilities: Contact office of information and assistance by September 1, 2012, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is the third rule-making phase being proposed to successfully establish and implement the intent of SSB 5801.

(1) The first rule-making phase adopted minimum standards for credentials of health care providers in the statewide health care provider network and to clarify what constitutes patterns of risk of harm or death that determines L&I may remove a provider from the network or take other appropriate action.

(2) The second rule-making process amended existing rules to allow injured and ill workers to see a provider of their choice for the initial visit and to inform health care providers and workers when care must be transferred to a network provider.

(3) This third rule-making is necessary to address existing department rules that may conflict with the network implementation. Changes to the following WACs are pro-

posed for consistency or clarification: WAC 296-20-01010, 296-20-01020, 296-20-02705, and 296-20-03015.

Reasons Supporting Proposal: This third rule making is necessary so that health care providers, state fund, employers, and injured and ill workers have a clear understanding of this new health care provider network and their rights and requirements under SSB 5801.

Statutory Authority for Adoption: SSB 5801 (as it amends RCW 51.36.010), RCW 51.04.020, and 51.04.030.

Statute Being Implemented: RCW 51.36.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governor Gregoire, 2011 legislators, the governor's interim workgroup made up of representatives of state fund and self-insured businesses and workers, L&I, private, public, and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Leah Hole-Curry, Medical Administrator, Office of the Medical Director, (360) 902-4996; and Enforcement: Beth Dupre, Assistant Director for Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not prepare a small business economic impact statement because it determined that the proposed rules will not have a disproportionate impact on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leah Hole-Curry, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-4996, fax (360) 902-6315, e-mail Leah.Hole-Curry@Lni.wa.gov.

August 21, 2012  
Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 12-02-058, filed 1/3/12, effective 2/3/12)

**WAC 296-20-01010 Scope of health care provider network.** (1) The rules establish the development, enrollment, and oversight of a network of health care providers approved to treat injured workers. The health care provider network rules apply to care for workers covered by Washington state fund and self-insured employers.

(2) As of January 1, 2013, the following types of health care providers (hereafter providers) must be enrolled in the network with an approved provider agreement to provide and be reimbursed for care to injured workers in Washington state beyond the initial office or emergency room visit:

- (a) Medical physicians and surgeons;
- (b) Osteopathic physicians and surgeons;
- (c) Chiropractic physicians;
- (d) Naturopathic physicians;
- (e) Podiatric physicians and surgeons;
- (f) Dentists;
- (g) Optometrists;
- (h) Advanced registered nurse practitioners; and
- (i) Physician assistants.

(3) The requirement in subsection (2) of this section does not apply to providers who practice exclusively in acute care hospitals or within inpatient settings in the following specialties:

- (a) Pathologists;
- (b) Consulting radiologists working within a hospital radiology department;
- (c) Anesthesiologists or certified registered nurse anesthetists (CRNAs) except anesthesiologists and CRNAs with pain management practices in either hospital-based or ambulatory care settings;
- (d) Emergency room providers; or
- (e) Hospitalists.

(4) The department may phase implementation of the network to ensure access within all geographic areas. The director of the department shall determine, at his/her discretion, whether to establish or expand the network, after consideration of the following:

- The percent of injured workers statewide who have access to at least five primary care providers within fifteen miles, compared to a baseline established within the previous twelve months;
- The percent of injured workers by county who have access to at least five primary care providers within fifteen miles, compared to a baseline established within the previous twelve months; and
- The availability within the network of a broad variety of specialists necessary to treat injured workers.

The department may expand the health care provider network scope to include additional providers not listed in subsection (2) of this section, listed in subsection (3) of this section, and to out-of-state providers. For providers outside the scope of the health care provider network rule, the department and self-insured employers may reimburse for treatment beyond the initial office or emergency room visit.

AMENDATORY SECTION (Amending WSR 12-02-058, filed 1/3/12, effective 2/3/12)

**WAC 296-20-01020 Health care provider network enrollment.** (1) The department or its delegated entity will review the provider's application, supporting documents, and any other information requested or accessed by the department that is relevant to verifying the provider's application, clinical experience or ability to meet or maintain provider network requirements.

(2) The department will notify providers of incomplete applications, including when credentialing information obtained from other sources materially varies from information on the provider application. The provider may submit a supplement to the application with corrections or supporting documents to explain discrepancies within thirty days of the date of the notification from the department. Incomplete applications will be considered withdrawn within forty-five days of notification.

(3) The provider must produce adequate and timely information and timely attestation to support evaluation of the application. The provider must produce information and respond to department requests for information that will help

resolve any questions regarding qualifications within the time frames specified in the application or by the department.

(4) The department's medical director or designee is authorized to approve, deny, or further review complete applications consistent with department rules and policies. Providers will be notified in writing of their approval or denial, or that their application is under further review within a reasonable period of time.

(5) Providers who meet the minimum provider network standards, have not been identified for further review, and are in compliance with department rules and policies, will be approved for enrollment into the network.

(6) Enrollment of a provider is effective no earlier than the date of the approved provider application. The department and self-insured employers will not pay for care provided to workers prior to application approval, regardless of whether the application is later approved or denied, except as provided in ~~((this))~~ subsection (7) of this section.

(7) The department and self-insured employers may pay a provider without an approved application only when:

(a) The provider is outside the scope of the provider network per WAC 296-20-01010; or

(b) The provider is provisionally enrolled by the department after it obtains:

(i) Verification of a current, valid license to practice;

(ii) Verification of the past five years of malpractice claims or settlements from the malpractice carrier or the results of the National Practitioner Data Bank (NPDB) or Healthcare Integrity and Protection Data Bank (HIPDB) query; and

(iii) A current and signed application with attestation.

(c) A provider may only be provisionally enrolled once and for no more than sixty calendar days. Providers who have previously participated in the network are not eligible for provisional enrollment.

AMENDATORY SECTION (Amending WSR 08-02-020, filed 12/21/07, effective 1/21/08)

**WAC 296-20-02705 What are treatment and diagnostic guidelines and how are they related to medical coverage decisions?** (1) Treatment and diagnostic guidelines are ~~((recommendations))~~ developed by the department for the diagnosis or treatment of accepted conditions. These guidelines are ~~((intended to guide))~~ developed to give providers ~~((through the))~~ a range of the many treatment or diagnostic options available for a particular medical condition. Treatment and diagnostic guidelines are a combination of the best available scientific evidence and a consensus of expert opinion.

(2) The department may develop treatment or diagnostic guidelines to improve outcomes for workers receiving covered health services. As appropriate to the subject matter, the department may develop these guidelines in collaboration with the ~~((department's formal advisory))~~ following committees:

- The industrial insurance medical advisory committee;
- The industrial insurance chiropractic advisory committee.

- The Washington state pharmacy and therapeutics committee.

- The Washington state health technology assessment clinical committee.

(3) In the process of implementing these guidelines, the department may find it necessary to make a formal medical coverage decision on one or more of the treatment or diagnostic options. The department, not the advisory committees, is responsible for implementing treatment guidelines and for making coverage decisions that result from such implementation.

(4) Network providers are required to follow the department's evidence-based coverage decisions, treatment guidelines, and policies.

AMENDATORY SECTION (Amending WSR 00-01-040, filed 12/7/99, effective 1/20/00)

**WAC 296-20-03015 What steps may the department or self-insurer take when concerned about the amount or appropriateness of drugs and medications prescribed to the injured worker?** (1) The department or self-insurer may take any or all of the following steps when concerned about the amount or appropriateness of drugs the patient is receiving:

- Notify the attending ~~((physician))~~ provider of concerns regarding the medications such as drug interactions, adverse reactions, prescriptions by other providers;

- Require that the attending ~~((physician))~~ provider send a treatment plan addressing the drug concerns;

- Request a consultation from an appropriate specialist;

- Request that the attending ~~((physician))~~ provider consider reducing the prescription, and provide information to the injured worker on chemical dependency programs, if indicated;

- Limit payment for drugs on a claim to one prescribing ~~((doctor))~~ provider.

(2) If the attending ~~((physician))~~ provider or worker does not comply with these requests, or if the probability of imminent harm to the worker is high, the department or self-insurer may discontinue payment for the drug after adequate prior notification has been given to the worker, pharmacy and physician.

(3) ~~((Physician))~~ Provider failure to reduce or terminate prescription of controlled substances, habit forming or addicting medications, or dependency inducing medications, after department or self-insurer request to do so for an injured worker may result in a transfer of the worker to another ~~((physician))~~ network provider of the worker's choice. (See WAC 296-20-065.)

(4) Other corrective actions, up to and including removal from the provider network, may be taken in accordance with WAC 296-20-015, Who may treat, and WAC 296-20-01100, Risk of harm.

**WSR 12-17-127**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 11-07—Filed August 21, 2012, 1:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-133.

Title of Rule and Other Identifying Information: Air quality fee regulation, chapter 173-455 WAC.

Hearing Location(s): We are holding one public hearing using conference call and video conference in three locations. The formal public hearing will follow a presentation and question and answer session. You can participate in person at one of ecology's regional offices in Lacey, Spokane and Yakima or call in. If you have called in to the conference call, you may ask questions during the question and answer session and provide formal comments.

Hearing on September 25, 2012, at 1:30 p.m.

Comments: Ecology will accept oral testimony at the video conference locations and by phone by calling in to the conference call.

Materials: Hearing materials are available at [http://www.ecy.wa.gov/programs/air/rules/fee\\_rule.html](http://www.ecy.wa.gov/programs/air/rules/fee_rule.html).

Primary Location: Ecology Headquarters Building, Auditorium, 300 Desmond Drive S.E., Lacey, WA 98503.

Videoconference Locations: Ecology Central Regional Office, Conference Room 204-A Waterfall, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902; and Ecology Eastern Regional Office, Conference Room NW-18, North 4601 Monroe, Spokane, WA 99205.

Conference Call: Call (360) 407-3780, PIN Code 980708#, wait for the conference operator to connect you to the hearing if lines are full.

Date of Intended Adoption: November 30, 2012.

Submit Written Comments to: Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [AQComments@ecy.wa.gov](mailto:AQComments@ecy.wa.gov), fax (360) 407-7534, by October 2, 2012.

Assistance for Persons with Disabilities: Contact Tami Weiler in the air quality program, (360) 407-6800, by September 16, 2012. Persons with hearing loss call 711 for Washington relay service. Persons with a speech disability call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The air quality fee regulation includes fees for a number of air quality activities. This rule making mainly focuses on adjusting fees for the existing registration program and gas stations. Specifically, the rule-making proposes to:

1. Increase yearly registration program fees for businesses that report their emissions every three years (periodic sources) from \$400 a year to \$450, \$700 or \$1000 a year based on emission rates, including increasing late fees from \$50 to \$68. The legislature directed ecology to increase these fees. They have not been changed in seventeen years since they were adopted in April 1995.

2. Reestablish air quality inspection fees for gasoline dispensing facilities in ecology's jurisdiction. This is most of central and eastern Washington and San Juan County (see agency comment section). A gasoline dispensing facility reg-

ulated by a local air agency is *not* covered under this rule making. A \$130 fee per tank dispensing gasoline is proposed to begin on July 1, 2013. The department of revenue (DOR) will collect the fee as part of the yearly business license. Reestablishing the gasoline vapor recovery inspection program reduces the health risk from benzene exposure at and near gasoline dispensing facilities, and reduces the formation of ozone.

3. Insert the rates used to calculate the 2012 annual registration fees and remove the existing process in the rule to calculate these fees. The 2012 rates are established following the existing method in the rule and then increased by thirty-six percent as directed by the legislature.

4. Provides a new process for making future fee increases for most fees in chapter 173-455 WAC. This change will not result in any additional fee increases at this time. Ecology proposes to link fee increases to the Washington fiscal growth factor when possible based on the cost of running the program without going through rule making. This translates to smaller and more frequent increases compared to larger and infrequent increases.

5. Makes house-keeping changes to increase the understanding of the rule and clarify the rules' intent. House-keeping changes include, but are not limited to, consolidating registration program fees in one location, correcting word use, clarifying that an applicant could use the existing \$200 prevention of significant deterioration (PSD) applicability determination fee for preapplication assistance beyond ecology's standard practice of one preapplication meeting, and updating the general orders. Ecology is continuing our current practice of holding a preapplication meeting between applicants and staff.

Reasons Supporting Proposal: As directed by the legislature, the proposal for increasing registration program fees shifts responsibility for funding the program away from tax dollars to users of the program. Establishing a three-tiered system for fees for periodic registration program sources more equitably reflects the workload associated with regulating these businesses. We are reestablishing the gasoline vapor recovery inspection program to reduce public health risk from exposure to benzene and other toxic pollutants at and near gasoline dispensing facilities. Controlling gasoline vapor emissions reduces ozone formation to protect public health and prevent a violation of federal standards. We are replacing the method for determining annual registration program sources with the 2012 fee rates to simplify the process and improve fee transparency. Establishing a method for increasing fees in the future ensures that the cost of administering the program remains covered by fees and minimizes tax dollar subsidy of the program. Linking fee increases to Washington's fiscal growth factor is likely to result in smaller, more frequent increases compared to infrequent and large increases. We are also making a number of housekeeping changes to improve the understanding of the rule and clarify the rule's intent.

Statutory Authority for Adoption: RCW 70.95.151 and chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

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: Ecology's air quality jurisdiction covers most of central and eastern Washington and San Juan County. Local air agencies are responsible for ensuring compliance with federal, state and local rules in the other counties. Ecology's counties include:

- Eastern Regional Office: Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Stevens, Walla Walls [Walla Walla], Whitman.
- Central Regional Office: Chelan, Douglas, Kittitas, Klickitat, Okanogan.
- Northwest Regional Office: San Juan.

Clarifying the intent of the PSD preapplication discussion fee: Before submitting an application, ecology holds a preapplication meeting with an applicant to discuss their project and the permitting process. This fee provides a venue for applicants who are not ready to file an application but want ecology to continue scoping discussions about their project after ecology held its standard meeting. This change clarifies that the PSD applicability determination fee applies broadly to preapplication work.

Consistent with the governor's directive to increase efficiencies and avoid duplicative activities, the existing underground storage tank inspectors will implement and enforce the inspections of the gasoline dispensing facilities. They currently inspect the gasoline vapor Stage 1 systems (underground storage tank systems) for compliance with other rules.

Ecology intends to seek approval to begin rule making in early 2013 to update requirements in emission standards and controls for sources emitting gasoline vapors (chapter 173-491 WAC) for consistency with federal requirements.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Air Quality Program, 300 Desmond Drive, Lacey, WA, (360) 407-6855; Implementation and Enforcement: Greg Flibbert, Registration Program, Air Quality Program, North 4601 Monroe, Spokane, WA, (509) 329-3452; Mike Hibbler, Underground Storage Tank Program, North 4601 Monroe, Spokane, WA, (509) 329-3568; Sue Billings, Registration Program, Air Quality Program, 15 West Yakima Avenue, Yakima, WA, (509) 575-2486; and Valerie Bound, Underground Storage Tank Program, 15 West Yakima Avenue, Yakima, WA, (509) 454-7886.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Executive Summary:** In this rule making, ecology is updating chapter 173-455 WAC, Air quality fee regulation. This rule action covers fees associated with periodic and annual sources.

Businesses that generate small and moderate amounts of air pollution must participate in the air quality source registration program. The registration program is necessary to

ensure that sources of air pollution operate in a way that minimizes emissions to comply with the Clean Air Act and protect human health.

Businesses generally report emissions either:

- Yearly in the case of annual registration program sources.
- Once every three years for periodic registration program sources.
- Once every six years for exempt registration program sources.

The proposed changes to the fee schedule include:

- Increases to general registration program fees for periodic sources.
- Reestablishing air quality registration fees for gasoline dispensing facilities.
- Clarifying the process for calculating registration program fees.
- Provide a method for making future fee increases.
- Make housekeeping changes to facilitate clarity and compliance.

Probable benefits include:

- Decrease in public risk of benzene exposure.
- Avoided decreases in program services.
- Clarification and improved compliance.
- Avoided decrease in program services.

Probable quantified costs include:

- \$112,980 per year in total increased permit fees.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses. Ecology also considered the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor's Executive Order 10-06.<sup>1</sup>

For periodic sources as well as gasoline dispensing facilities, the proposed fee increases result in roughly two hundred fifty times the impact on small businesses as opposed to large businesses on a per-employee basis. This means ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology made decisions in the course of rule making intended to reduce disproportionate impacts on small businesses, including changing proposed fees that were likely to affect more small businesses. The proposed rule also includes text providing hardship and economic considerations for small businesses in altering their compliance costs.

Based on the Washington state office of financial management's input-output model of the state economy, ecology calculated that the proposed rule may result in three to four jobs being lost in the economy permanently over the next twenty years.

**Chapter 1 Background:** Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule amendments (chapter 173-455 WAC) likely have a disproportionate impact on small business. Therefore, ecology included cost-

minimizing features in the rule where it is legal and feasible to do so.

This document presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by ecology.

It is intended to be read with the associated cost-benefit analysis (CBA) (Ecology Publication #12-02-011), which contains more in-depth discussion of the analyses.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment - the way air quality fees would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the "baseline" in this document. It includes only existing regulation through laws and rules at federal, state, and local levels. It does not include elements such as guidance or unofficial standard practices in industry or business.

**1.1 History:** Air pollution control in Washington is based on federal, state and local laws and regulations. The federal Environmental Protection Agency (EPA), ecology, and local clean air agencies all regulate air quality. Ecology establishes rules, and implements and enforces air quality regulations in counties without a local clean air agency. Ecology also has statewide jurisdiction over primary aluminum plants, pulp mills, large commercial and industrial facilities subject to the federal PSD program, and emissions of specific toxic air pollutants that exceed specified levels.

If you are located in one of the following counties, you have a local clean air agency: Benton, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Whatcom, or Yakima. Local clean air agencies may implement and enforce most state regulations. All local clean air agencies have their own regulations that may be more restrictive than those of ecology, but not less.

Ecology regulates businesses with air emissions that are located in certain areas:

- Hanford Nuclear Reservation.
- **Central Region:** Chelan, Douglas, Kittitas, Klickitat, and Okanogan Counties.
- **Eastern Region:** Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Stevens, Walla Walla, Whitman Counties.
- **Northwest Region:** San Juan County.

Ecology also regulates specific types of businesses, such as:

- Kraft pulp and paper mills.
- Primary aluminum mills.
- Large industrial or commercial sources subject to the federal PSD program.
- Emitters of specific toxic air emissions at rates higher than levels specified by rule.

Businesses that generate small and moderate amounts of air pollution must participate in the air quality source registration program. The registration program is necessary to ensure that sources of air pollution operate in a way that minimizes emissions to comply with the Clean Air Act and protect human health.

The registration information helps ecology to:

- Maintain a current and accurate record of air pollution sources in Washington.
- Provide businesses with technical assistance on how to comply with Clean Air Act requirements.
- Verify that businesses are complying with air pollution control requirements.
- Evaluate the effectiveness of air pollution control strategies.
- Gather and verify emissions data.

Businesses generally report emissions either:

- Yearly in the case of annual registration program sources.
- Once every three years for periodic registration program sources.
- Once every six years for exempt registration program sources.

**1.2 Regulatory Baseline:** In most cases, the regulatory baseline for the small business economic impact statement (SBEIS), just as for the CBA is the existing rule. Where there is no existing rule, federal and local regulations are the baseline. In the case of the proposed amendments to the air quality fees rule, the existing rule comprises the baseline. The regulatory baseline is the way air quality permit fees would be assigned if the proposed rule is not adopted - that is, based on existing laws and rules. The baseline does not include guidance and practices commonly used in existing permit fee determination and behavior if they are not required by a law, rule, permit, et cetera.

**1.3 Changes Under the Proposed Rule:** Ecology analyzed the impacts of the following changes proposed to the air quality fees rule:

- Increase general registration program fees for businesses that release small amounts of emissions and report those emissions every three years. These are periodic registration program sources.
- Reestablish air quality registration fees for gasoline dispensing facilities (mainly gas stations).
- Insert the 2012 fee rates used to calculate the annual registration fee and remove the existing process in the rule used to calculate these fees.
- Provide a method for making future fee increases.
- Address "housekeeping" changes necessary to improve the understanding and usability of the rule.

For more information about these changes, see the associated cost-benefit and least burdensome alternatives analysis for the proposed rule amendments (Ecology Publication #12-02-011).

**Chapter 2 Analysis of Compliance Costs for Washington Businesses:** Ecology estimated the expected costs associated with the proposed amendments to the air quality

fee rule, as compared to the baseline as described in section 1.2. In this rule making, ecology is updating chapter 173-455 WAC, Air quality fee regulation. This rule action covers fees associated with periodic and annual sources.

Businesses that generate small and moderate amounts of air pollution must participate in the air quality source registration program. The registration program is necessary to ensure that sources of air pollution operate in a way that minimizes emissions to comply with the Clean Air Act and protect human health.

Businesses generally report emissions either:

- Yearly in the case of annual registration program sources.
- Once every three years for periodic registration program sources.
- Once every six years for exempt registration program sources.

The proposed changes to the fee schedule include:

- Increases to general registration program fees for periodic sources.
- Reestablishing air quality registration fees for gasoline dispensing facilities.
- Clarifying the process for calculating registration program fees.
- Provide a method for making future fee increases.
- Make housekeeping changes to facilitate clarity and compliance.

Probable benefits include:

- Decrease in public risk of benzene exposure.
- Avoided decreases in program services.
- Clarification and improved compliance.
- Avoided decrease in program services.

Probable quantified costs include:

- \$112,980 per year in total increased permit fees.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses. Ecology also considered the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor's Executive Order 10-06.

For periodic sources as well as gasoline dispensing facilities, the proposed fee increases result in roughly two hundred fifty times the impact on small businesses as opposed to large businesses on a per-employee basis. This means ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology made decisions in the course of rule making intended to reduce disproportionate impacts on small businesses, including changing proposed fees that were likely to affect more small businesses. The proposed rule also includes text providing hardship and economic considerations for small businesses in altering their compliance costs.

Based on Washington state office of financial management's input-output model of the state economy, ecology calculated that the proposed rule may result in three to four jobs

being lost in the economy permanently over the next twenty years.

**2.1 Quantification of Costs and Ratios:** Ecology calculated the annual costs estimated to come from compliance with the proposed rule amendments. In this section, ecology summarizes compliance cost calculations (due to space constraints in this document, the full cost and benefit analyses are presented in the associated CBA, Ecology Publication #12-02-011).

Ecology also discusses general qualities of businesses and compliance costs, as an additional illustration of the distribution of compliance costs across different business sizes.

Proposed yearly source registration fees for periodic sources are based on the amount of annual emissions of various contaminants. However, there is strong correlation between business size and emissions. Table 1 summarizes this correlation (for example, eighty-one percent of small businesses are small emitters, ten percent are medium emitters and nine percent are large emitters).

Table 1: Firm size by number of employees and periodic category

	Periodic Category		
	Small	Medium	Large
Proposed Yearly Fee	\$450	\$700	\$1,000
Small Businesses (less than 50 employees)	81%	10%	9%
Large Businesses (largest 10% of businesses)	55%	34%	11%

Currently, fees are fixed-rate (that is they do not depend on emissions) at \$400 per year. Using Table 1, the average annual fee based on the proposed rule amendment is estimated to be \$525.11 for small businesses and \$593.42 for large businesses. The cost attributable to the proposed rule amendments would be the difference between the current fee and the estimated fee, or \$125.11 for small businesses and \$193.42 for large businesses.

For gasoline dispensing facilities, proposed fees are based on the number of tanks. The average number of tanks per facility is two, for an average fee of \$260. Currently, the fee is \$100 per facility. Therefore, the cost attributable to the proposed rule amendments would be the difference between the current fee and the estimated fee, or \$160 per facility.

**Chapter 3: Cost Per Employee:** Three hundred twenty-three businesses that are currently periodic registration sources and four hundred sixteen gasoline dispensing facilities within ecology's jurisdiction would be impacted by this rule amendment.

**Periodic Sources:** Of the periodic sources, nearly eighty percent are small businesses with less than fifty employees, averaging roughly twelve employees each.

In accordance with SBEIS requirements in the Regulatory Fairness Act, ecology identified the largest ten percent of businesses that are impacted by the proposed rule amend-

ments. The largest ten percent of affected businesses average four thousand four hundred forty-six employees each.

Ecology is required to compare the costs per employee for small businesses (those employing fewer than fifty people) with the largest ten percent of all businesses complying. In comparing the per-employee costs of compliance with the proposed rule amendments, ecology found that the largest businesses experience the lowest per-employee costs, at roughly \$0.04 per employee.

The average number of employees for businesses with less than fifty employees is equal to approximately twelve employees. The smallest businesses experience greater per-employee costs (relative to the top ten percent of businesses), equal to \$10.43 per employee.

As a result, ecology believes the proposed rule imposes disproportionate costs on small businesses. Ecology must then include, in the proposed rule, elements mitigating costs to small businesses where legal and feasible. These are discussed in Chapter 4 Actions Taken to Reduce the Impact of the Rule on Small Business.

**Gasoline Dispensing Facilities:** Nearly all of the gasoline dispensing facilities have less than fifty employees. There is no correlation between the number of tanks and the number of employees. Therefore, because the proposed fee increase averages \$160 per facility, it is disproportional.

**Chapter 4 Actions Taken to Reduce the Impact of the Rule on Small Business:** Ecology took a number of actions to reduce the disproportionate impacts on small business.

Registration program:

- While the proposed periodic source fee is a three-tiered fee structure based on the amount each business emits, as opposed to the size of the business, the strong correlation between emission level and business size acts to help mitigate the disproportionate impact on small businesses. This is because smaller business tends to have lower emissions and therefore they fall into the small source fee category.
- To reduce the impact of the fee increase, a payment plan option is included in the rule. This allows a business to spread payments over several months.
- The small business extreme hardship fee reduction is retained from the existing rule. A small business may reduce their fee in half if their net profit is \$12,000 or less.
- Routine compliance inspections of exempt sources (the smallest sources based on emissions) were discontinued. Ecology decided there was minimal value in inspecting this group on a routine basis. This saves the business the lost work time spent meeting with an inspector once every six years.

Gasoline distribution:

- Ecology shifted the implementation of the inspection program from the air quality program to existing underground storage tank inspectors, almost halving the fee.
- Contracting with the DOR to collect the fee as part of the licensing renewal process reduces the fee.
- Fee[s] are phased in beginning six months after the rule is adopted and will be collected on the renewal

date of the owner's business license. This saves the business from being billed twice in one year.

**Chapter 5 Involvement of Small Business in the Development of the Proposed Rule Amendments:** Ecology involved small business and local governments (as well as large businesses and other interested parties) in the proposed rule.

Small business and local governments in most of central and eastern Washington and San Juan County are the stakeholders for this rule making. The stakeholders for this process were allowed to self-select to participate. We sent a postcard to all affected businesses in advance of each of the two meetings notifying them of our intent to increase or reestablish fees and inviting them to attend. To reduce barriers to participation, a conference line was available for each meeting. The registration meetings were held in Moses Lake. The gas station meetings were held as video conferences with locations at the ecology regional offices in Lacey, Spokane and Yakima.

- For the first meeting about the registration program, ten business representatives that included several small businesses participated in person at the Moses Lake location. Another eight participated via the telephone. Everyone was encouraged to submit their comments via e-mail on the fee options discussed at the meeting, both ecology's and those suggested by participants. Fewer small businesses participated in the second meeting although that did not reduce the value of the comments.
- For the first gas station meeting, two staff from one gas station attended in person at the Spokane office and five gasoline distributors participated by telephone. Several small business representatives participated, along with two representatives from trade associations that articulated small business owner concerns. Two stakeholders participated in person and six participated via the telephone in the second meeting. Several small businesses participated, along with representatives from Western Oil Marketers Association.

**Chapter 6 NAICS Codes of Impacted Industries:** Table 2 lists North American Industry Classification System (NAICS) codes for industries ecology expects to be impacted by the proposed rule amendments. We derived these codes from our data set of currently registered sources.

**Table 2: NAICS Codes of Affected Businesses**

111339	238210	326199	334511	424480	486110	611310
111998	238220	327310	334515	424510	488210	622110
112112	238910	327320	336360	424520	493190	711190
115114	238990	327390	336413	424690	493190	811111
115210	311119	327991	336612	424720	511210	811121
212312	311411	331312	337110	424910	517410	811420
212321	311412	331513	339112	425120	518210	811490
212322	311611	331524	423120	441110	541511	812210
212399	311999	332312	423310	443112	541890	812220
221122	321912	332323	423320	444190	541940	812320

236115	321920	332813	423320	444220	561110	822212
236118	322121	333312	423820	445110	561910	921120
237310	325188	333319	423830	453998	561920	921190
238110	325998	333414	423990	484220	562212	922140

**Chapter 7 Impacts on Jobs:** Ecology used the Washington state office of financial management's Washington input-output Model<sup>2</sup> to estimate the impact of the proposed fee increases on employment. The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output. To estimate job impacts, ecology used the distribution of businesses in each impacted industry.

The model estimates between three and four jobs permanently lost in the state, over the next twenty years. This result does not account for where fee payments are re-spent by government, as it would on inter-industry transfer payments.

<sup>1</sup>[http://www.governor.wa.gov/news/Executive\\_Order\\_10-06.pdf](http://www.governor.wa.gov/news/Executive_Order_10-06.pdf)

<sup>2</sup>Please see the Washington state office of financial management's site for more information on the input-output model: <http://www.ofm.wa.gov/economy/io/2002/default.asp>.

A copy of the statement may be obtained by contacting Elena Guilfoil, P.O. Box 47600, Olympia, WA 98504-7600, phone(360) 407-6855, fax (360) 407-7534, e-mail elena.guilfoil@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Elena Guilfoil, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6855, fax (360) 407-7534, e-mail elena.guilfoil@ecy.wa.gov.

August 21, 2012

Polly Zehm

Deputy Director

## Chapter 173-455 WAC

### AIR QUALITY FEE ((REGULATION)) RULE

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

**WAC 173-455-010 Overview.** ~~((It is))~~ The purpose of this chapter is to consolidate most of the air quality related fees into one chapter. This will allow the regulated community easier access to applicable fees.

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

**WAC 173-455-030 Applicability.** (1) The provisions of this chapter apply to air quality related activities regulated by the department of ecology.

(2) The solid fuel retail sales fee in WAC 173-455-060 and the weather modification fee in WAC 173-455-070 apply statewide. All other provisions of this chapter do not apply in counties regulated by a local air agency.

### NEW SECTION

**WAC 173-455-036 Fee increases.** (1) Ecology must follow the processes in subsections (2) and (3) of this section for increasing any of the following fees:

- Air contaminant source registration fees in WAC 173-455-040;
- Carbon dioxide mitigation program fees in WAC 173-455-050;
- Weather modification fees in WAC 173-455-070;
- Control technology fees in WAC 173-455-100;
- New source review fees in WAC 173-455-120;
- Air pollution standards variance fee in WAC 173-455-130; and

(g) Nonroad engine permit fee in WAC 173-455-140.

(2) Ecology may propose fee increases in even-numbered years for each year in the upcoming biennium. A workload analysis must support the fee increase. Prior to making any changes, ecology will post the new fees on the agency web site no later than November 30th of the year preceding the date on which the new fees will take place.

(3) Ecology may adjust fees by the fiscal growth factor calculated under chapter 43.135 RCW as follows.

$$\text{New fee} = \text{Existing fee} \times (1 + \text{FGF})$$

Where FGF means the annual fiscal growth factor calculated under chapter 43.135 RCW (expressed as a decimal)

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

**WAC 173-455-038 Fees not included.** This chapter contains all fees required by the air quality program except the following:

- Air operating permit ~~((program))~~ - Fees can be found in chapter 173-401 WAC.
- ~~((Ag))~~ Agricultural burning - Fees can be found in chapter 173-430 WAC.
- Motor vehicle emission inspection - Fees can be found in chapter 173-422A WAC.

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

**WAC 173-455-040 Air contaminant source registration fees.** (1) ~~((Registration fee determination. In counties without an active local air pollution control authority, ecology shall establish registration fees based on workload using the process outlined below. The fees collected shall be sufficient to cover the direct and indirect costs of administering the registration program within ecology's jurisdiction.~~

(2) ~~Budget preparation. Ecology shall conduct a workload analysis projecting resource requirements for administering the registration program. Workload estimates shall be prepared on a biennial basis and shall estimate the resources required to perform registration program activities listed in WAC 173-400-099(2). Ecology shall prepare a budget for administering the registration program using workload estimates identified in the workload analysis for the biennium.~~

(3) Registration fee schedule. Ecology's registration program budget shall be distributed to sources located in its jurisdiction according to the following:

(a) Sources requiring periodic registration and inspections shall pay an annual registration fee of four hundred dollars.

(b) Sources requiring annual registration and inspections shall pay a registration fee comprised of the following three components: (i) Ecology will charge a yearly registration fee to cover the cost of implementing the registration program.

(2) Ecology will determine fee eligibility based on the most current emissions inventory information available for each source.

(3) A registration program source that shut down during the previous year and is not operating in the current year is not subject to a fee for the current calendar year.

(4) Periodic registration program source eligibility and fees are determined as follows:

(a) A source is a periodic registration program source if all of these statements are true:

(i) A source is included on the source classification list in WAC 173-400-100(1) or the equipment classification list in WAC 173-400-100(2);

(ii) The source emits at least one pollutant in Table 173-455-040 (4)(c) within the rates in the table; and

(iii) The source does not emit any pollutant at a rate higher than those in Table 173-455-040 (4)(c).

(b) The registration fee category and fee for periodic registration program source are determined as follows:

(i) Ecology will determine whether the periodic sources is in the small, medium, or large category based on the source's most current emissions inventory information.

(ii) Ecology will determine whether the source's category based on the emission rate of the air contaminant that falls in the category with the highest fee.

(c) A periodic registration program source must pay the applicable yearly registration fee on Table 173-455-040 (4)(c).

Table 173-455-040 (4)(c)  
Periodic Registration Fee Table

Yearly periodic registration fee	\$450	\$700	\$1,000
Category	Small Periodic Source	Medium Periodic Source	Large Periodic Source
Air Contaminant	Emission Rates		
	Tons per year	Tons per year	Tons per year
Carbon monoxide	5 to < 15	15 to < 30	30 to < 100
Lead	0.005 to < 0.3	0.3 to < 0.45	0.45 to < 0.6
Nitrogen oxides	2.0 to < 5	5 to < 14	14 to < 40
Particulate matter (TSP or total suspended particulates)	1.25 to < 6	6 to < 12	12 to < 25
Particulate matter <sub>10</sub>	0.75 to < 3.5	3.5 to < 7	7 to < 15
Particulate matter <sub>2.5</sub>	0.5 to < 2	2 to < 5	5 to < 10
Sulfur dioxide	2.0 to < 5	5 to < 14	14 to < 40
Volatile organic compounds	2.0 to < 5	5 to < 14	14 to < 40
Toxic air pollutant	> de minimis emissions*	=	=

\* "De minimis emissions" means trivial levels of toxic air emissions that do not pose a threat to human health or the environment. WAC 173-460-150 contains the de minimis emission rate of a toxic air pollutant in pounds per averaging period (year, 24-hour, 1-hour).

(5) Annual registration program source fees are determined as follows:

(a) Ecology will determine the annual registration fee based on the most current emissions inventory information.

(b) A source that is included on the source classification list in WAC 173-400-100(1) or the equipment classification list in WAC 173-400-100(2) is an annual registration program source if it meets any of the following criteria:

(i) The source emits one or more air pollutants in Table 173-455-040 (5)(b) at rates greater than those in the table; or

Table 173-455-040 (5)(b)  
Annual Registration Emission Rate Table

Air Pollutant	Emission Rate
Carbon monoxide	100 tons per year

Air Pollutant	Emission Rate
Lead	0.6 tons per year
Fluorides	3 tons per year
Nitrogen oxides	40 tons per year
Particulate matter	25 tons per year
Particulate matter <sub>10</sub>	15 tons per year
Particulate matter <sub>2.5</sub>	10 tons per year
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tons per year
Sulfur dioxide	40 tons per year
Sulfuric acid mist	7 tons per year
Total reduced sulfur (including H <sub>2</sub> S)	10 tons per year

(ii) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

(iii) Annual registration and reporting is required in a reasonably available control technology determination for the source category; or

(iv) The director of ecology determines that the source poses a potential threat to human health and the environment.

(c) Annual registration program sources must pay a yearly registration fee comprised of the following three components:

**Annual Registration Fee Components**

<b><u>Component</u></b>	<b><u>Fee Rate</u></b>
<u>Flat fee</u>	<u>\$1,057 per year</u>
<u>Complexity</u>	<u>\$469 per complexity rating point</u>
<u>Emissions</u>	<u>\$16 per ton</u>

(i) Flat fee component. ((This portion of a source's fee shall be calculated by the equal division of thirty-five percent of the budget amount allocated to annual registration sources by the total number of sources requiring annual registration.)) Each source must pay the flat fee component plus the other fees.

(ii) Complexity component. Each source is assigned a complexity rating of 1, 3, or 5 which is based on the estimated amount of time needed by ecology to review and inspect the source. ((This portion of the fee is calculated by dividing forty percent of the budget amount allocated to annually registered sources by the total complexity of sources located in ecology's jurisdiction. The quotient is then multiplied by an individual source's complexity rating to determine that source's complexity portion of the fee.)) The source's complexity rating is multiplied by the complexity fee rate to determine the complexity portion of the yearly registration fee.

(iii) Emissions component. ((This portion of a source's fee is calculated by dividing twenty-five percent of the budget amount allocated to annually registered sources by the total billable emissions from those sources. The quotient is then multiplied by an individual source's billable emissions to determine that source's emissions portion of the fee.)) Billable emissions ((include all air pollutants except carbon monoxide and total suspended particulate.

(4) Regulatory orders. Owners or operators registering a source as a synthetic minor must obtain a regulatory order which limits the source's emissions. The owner will be required to pay a fee based on the amount of time required to research and write the order multiplied by an hourly rate of sixty dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce registration fees for an individual source if that source demonstrates the use of approved pollution prevention measures or best management practices beyond those required of the source.

(6)) (in tons per year) include nitrogen oxides, sulfur dioxide, particulate matter (except total suspended particulate), and volatile organic compounds.

The source's billable emissions are multiplied by the emissions fee rate to determine the emissions portion of the yearly registration fee.

(6) Registration fees for gasoline dispensing facilities. Gasoline dispensing facilities must pay a yearly registration fee of one hundred thirty dollars for each storage tank dispensing gasoline.

(7) Fee reductions for economic hardships. If a small business owner subject to a periodic registration program fee under subsection (4) of this section believes the registration fee results in an extreme economic hardship, the small business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. ((The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits; and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars.

(7)) The registration fee may be reduced by no more than fifty percent.

(8) Fee payments.

(a) A source subject to fees ((specified)) in this section ((shall be paid)) must pay those fees within thirty days of receipt of ecology's billing statement.

(b) All fees collected under this regulation ((shall)) must be made payable to the Washington department of ecology.

(c) A late fee ((surcharge)) of ((fifty)) sixty-eight dollars or ten percent of the fee, whichever is more, may be assessed for any fee not received ((after)) within the thirty-day period.

((8) Dedicated account. All registration fees collected by ecology shall be deposited in the air pollution control account.

(9) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source specific basis. Ecology shall track time and expenditures on the basis of ecology budget functions.

(10)) (d) A source may request to pay an ecology fee on a payment plan. A payment plan does not apply to fees collected by the department of revenue. A late fee will not apply for fees paid by a payment plan as long as the following two conditions are met:

(i) The source requests a payment plan within thirty days of the receipt of ecology's billing statement.

(ii) The source pays the fee on time as outlined in the payment plan.

(9) Additional registration fee for fossil-fueled electric generating facilities. ((A)) Fossil-fueled electric generating ((facility subject to the provisions of chapter 80.70 RCW and RCW 70.94.892, is subject to additional fees pursuant to that chapter)) facilities must pay registration fees required in this section in addition to carbon dioxide mitigation program fees required in WAC 173-455-050.

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

**WAC 173-455-100 Control technology fees.** (1) General. Ecology may assess and collect a fee as authorized in RCW 70.94.153 or 70.94.154 and described in subsections (2) through (5) of this section.

(2) Fee schedule for source-specific determinations where RACT analysis and determination are performed by ecology.

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - Two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant - One thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - Two thousand dollars.

(3) Fee schedule for source-specific determinations where RACT analysis is performed by the source and review and determination conducted by ecology.

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and determination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - One thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, indi-

vidually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant - Five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - One thousand dollars.

(4) Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application (NOCA) for replacement or substantial alteration of control technology - Three hundred fifty dollars.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - Five hundred dollars.

(5) Fee schedule for categorical RACT determinations. Fees for categorical RACT determinations (for categories with more than three sources) shall be assessed as shown below. The fees described in (a) of this subsection shall be based on the most complex source within a category. Except as provided in (b) and (d) of this subsection, fees for individual sources in the category will be determined by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than twenty tons per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - Twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than twenty tons per year and less than one hundred tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ten tons per year, or the analysis addresses two to five types of emissions units) - Fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed one hundred tons per year, average source emissions of one or more individual toxic air pollutants exceed ten tons per year, or the analysis addresses more than five types of emission units) - One hundred thousand dollars.

(b) If an emission unit is being evaluated for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

(6) Small business fee reduction. The RACT analysis and determination fee identified in subsections (2) through (5) of this section may be reduced for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the RACT analysis and determination fee shall be reduced to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and average annual profits. In no case will a RACT analysis and determination fee be reduced below one hundred dollars.

(7) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

(8) Fee payments. Fees specified in subsection (4)(a) of this section shall be paid at the time a notice of construction applications is submitted to the department. Other fees specified in subsections (2) through (7) of this section shall be paid no later than thirty days after receipt of an ecology billing statement. For fees specified in subsection (5) of this section, a billing for one-half of the payment from each source will be mailed when the source category rule-making effort is commenced as noted by publication of the CR-101 form in the *Washington State Register*. A billing for the second half of the payment will be mailed when the proposed rule is published in the *Washington State Register*. No order of approval or other action approving or identifying a source to be at RACT will be issued by the department until all fees have been paid by the source. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(9) Dedicated account. All control technology fees collected by the department from permit program sources shall be deposited in the air operating permit account created under RCW 70.94.015. All control technology fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account.

(10) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of source-specific determinations under subsections (2) through (4) of this section, ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection (5) of this section, ecology shall track time and expenditures on a source-category basis.

(11) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

**AMENDATORY SECTION** (Amending Order 10-04, filed 5/31/11, effective 7/1/11)

**WAC 173-455-120 New source review fees.** (1) General requirements.

(a) The fees in this section apply to:

(i) Permit applications received on or after July 1, 2011.

(ii) Requests for ecology review of other actions covered by this section received by ecology on or after July 1, 2011.

(b) Components of permitting fees. Permit fees include initial fees and may include an hourly fee. The initial fee covers up to the number of review hours specified in each fee in this section.

(c) A project may be subject to multiple fees. For example, a project may be subject to both minor and major new source review permit fees and second or third tier review.

(d) An applicant must submit initial fees with an application, notice, or request. An application, notice or request is incomplete until initial fees have been paid.

(i) For purposes of WAC 173-400-111(1), initial fees are considered application fees.

(ii) If ecology determines a project is complex after an applicant submitted the basic project initial fee, then the application is incomplete until the applicant pays the initial complex project fee.

(iii) If ecology determines that a higher initial fee is due after an applicant submitted an application or request, the application or request is considered incomplete until the applicant pays the new initial fee.

(e) If the initial fee paid by an applicant does not cover the cost of processing the application, notice or request, then ecology shall assess a fee based on the actual costs for review in excess of the hours specified in each fee. The assessed fee must be a rate of ninety-five dollars per hour of ecology staff time expended.

(f) Ecology cannot finalize an action covered under this section until all fees are paid. (WAC 173-400-111(3).)

(g) An applicant must pay fees that are due by invoice from ecology within thirty days from the date of the invoice. Ecology will cease processing all applications for which the required fees have not been received within thirty days of an invoice.

(h) At the time of filing, an applicant must pay all delinquent air quality fees associated with the facility. This is in addition to the fees required by this section. Delinquent fees may include, but are not limited to, registration fees, civil penalties awarded to ecology, or other outstanding fees due under this section.

(i) All fees collected under this rule must be made payable to the department of ecology.

(j) Fees assessed under this section apply without regard to whether ecology approves or denies a request.

**Permit fees.**

**Minor new source review.**

(2) Review of new source or modification of an existing source with an emissions increase. (WAC 173-400-110 and 173-400-110(3).)

(a) Basic project: One thousand five hundred dollars plus an hourly rate of ninety-five dollars after sixteen hours.

This fee covers up to sixteen hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above sixteen hours.

(b) Complex project: Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(i) This fee covers up to one hundred six hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred six hours.

(ii) An application is considered complex if the emissions associated with the application include at least one pollutant for which emissions increases are greater than the levels in the following table:

**Emission Threshold Table  
(WAC 173-400-030)**

Air Contaminant	Annual Emission Rate
Carbon monoxide	100 tons per year
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Particulate matter (PM)	25 tons per year of PM emissions
	15 tons per year of PM <sub>10</sub> emissions
	10 tons per year of PM <sub>2.5</sub> emissions
Volatile organic compounds	40 tons per year
Fluorides	3 tons per year
Lead	0.6 tons per year
Sulfuric acid mist	7 tons per year
Hydrogen sulfide (H <sub>2</sub> S)	10 tons per year
Total reduced sulfur (including H <sub>2</sub> S)	10 tons per year
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tons per year

(ii) Ecology may determine that a project is complex based on consideration of factors that include, but are not limited to:

(A) Number and complexity of emission units;

(B) Volume of emissions, including toxicity of emissions;

(C) Amount and complexity of modeling; or

(D) Number and kind of applicable state and federal requirements.

(3) Change to an existing order of approval. (WAC 173-400-111(8).)

(a) Ecology will not charge a fee for correcting a mistake by ecology in a permit.

(b) Administrative or simple change: Two hundred dollars plus an hourly rate of ninety-five dollars after three hours.

(i) This fee covers up to three hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above three hours.

(ii) An administrative or simple change means:

(A) An action not subject to a mandatory public comment period in WAC 173-400-171; and

(B) The reissued approval order requires one hour or less of engineering evaluation and no physical modification of equipment; and

(C) Changes in permit conditions are based on actual operating conditions and the operating conditions require one hour or less of engineering evaluation and the change does not cause a change in allowable emissions.

(c) Complex changes: Eight hundred seventy-five dollars plus an hourly rate of ninety-five dollars after ten hours.

(i) This fee covers up to ten hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above ten hours.

(ii) This fee excludes an administrative or simple change and changes to an existing permit that result in an emissions increase.

(iii) Examples of complex changes include, but are not limited to:

(A) Changes requiring more than one hour of engineering review;

(B) Consolidation of permits not allowed under simple change;

(C) Request for review of a permit action that is exempt under WAC 173-400-110(5) (Table 110(5) emission-based exemption levels); or

(D) Changes requiring mandatory public comment under WAC 173-400-171.

(d) The fee for a permit modification (as defined in WAC 173-400-030) is located in subsection (2)(a) or (b) of this section.

(4) Request to extend approval to construct or modify a stationary source issued under minor new source review that is set to expire (WAC 173-400-111(7)): One hundred dollars.

An applicant may request an eighteen-month extension of an approval to construct.

(5) Review of general order of approval (WAC 173-400-560).

(a) Category A general order.

(i) SEPA review complete: Five hundred dollars.

(ii) SEPA review required: Seven hundred eighty-five dollars.

(iii) Category A consists of the following general order of approval, including any subsequent updating or replacement:

(A) Concrete batch plants (No. 08-AQG-002);

~~(B) ((Diesel powered emergency electrical generators (No. 06-AQG-006);~~

~~(C))~~ Rich burn, spark ignition, gaseous fossil fuel-powered emergency electrical generators (No. 06-AQG-005);

~~((D))~~ (C) Perchloroethylene dry cleaners using less than 2100 gallons per year (No. 06-AQG-003);

~~((E))~~ (D) Stationary and portable rock crushers~~((stationary (06-AQG-004))~~ (No. 11AQ-GO-001);

~~((F) Rock crusher, portable (07-AQG-001);~~

~~(G))~~ (E) Small water heaters and steam generating boilers (No. ~~((08-AQG-003))~~ 08-AQ-G003); and

~~((H))~~ (F) Automobile body repair and refinishing shops (No. 08-AQG-001).

(b) Category B general order.

(i) SEPA review complete: Eight hundred seventy-five dollars.

(ii) SEPA review required: One thousand one hundred sixty dollars.

(iii) Category B includes a general order of approval developed on or after January 1, 2011. ~~((This))~~ Category B covers, but is not limited to, the following general order of approval, including any subsequent updating or replacement:

(A) Portable and stationary asphalt plants (No. 10AQ-GO-01); and

(B) Dairy manure anaerobic digesters (No. 12AQ-GO-01).

(6) Review of relocation of portable source under WAC 173-400-036, 173-400-110 or 173-400-560.

(a) This fee applies to a portable source who intends to relocate in ecology's jurisdiction with an approval order from another permitting authority.

(i) SEPA review complete: One hundred fifty dollars.

(ii) SEPA review required: Four hundred thirty-five dollars.

(b) This fee applies to a portable source who intends to relocate in ecology's jurisdiction and has operated under an ecology issued approval order or is approved for coverage under an ecology issued general order of approval.

(i) SEPA review complete: No fee.

(ii) SEPA review required: Two hundred eighty-five dollars.

(7) Request to establish a voluntary emission limit (WAC 173-400-091): Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.

(a) This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

(b) This fee applies to a regulatory order issued under WAC 173-400-091 that places a limit on emissions.

(i) This fee applies to a request to establish the emission limit in a stand-alone regulatory order.

(ii) This fee does not apply when an emission limit is included as a condition in an approval order for a notice of construction application.

(8) Request to replace or substantially alter control technology: Refer to WAC 173-455-100(4) for fee schedule.

**Major new source review preapplication and permit fees.**

(9) Request for a written prevention of significant deterioration applicability determination (WAC 173-400-720) or preapplication assistance: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.

This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

(10) Prevention of significant deterioration (PSD) (WAC 173-400-720 and 173-400-730).

(a) PSD permit application: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) PSD permit application where greenhouse gases are the sole PSD pollutant being reviewed: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(11) Revision to a prevention of significant deterioration permit (WAC 173-400-750).

(a) Administrative revision as defined in WAC 173-400-750(3): One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

(b) All other revisions (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(c) The fee for a major modification of a PSD permit (as defined in WAC 173-400-720) is located in subsection (10)(a) of this section.

(12) Request to extend the following major source approvals that are set to expire: Five hundred dollars. This provision applies to each of the following:

(a) PSD permit, including a major modification;

(b) PSD permit revision;

(c) Approval order for major source nonattainment area permitting; and

(d) A change to an approval order for major source nonattainment area permitting.

(13) Nonattainment area major new source review.

(a) A notice of construction application subject to WAC 173-400-830: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) Change to an approval order issued under WAC 173-400-830:

(i) Request to change permit conditions under WAC 173-400-111(8) that is not subject to mandatory public comment in WAC 173-400-171: One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

(ii) All other permit changes (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(iii) The fee for a major modification (as defined in WAC 173-400-810) of an approval order is located in subsection (13)(a) of this section.

(14) Plant-wide applicability limits (WAC 173-400-720).

(a) Request to establish new plant-wide applicability limits: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers up to one hundred fifty-eight hours of staff time to review the request and establish a plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above one hundred fifty-eight hours.

(b) All other requests, such as increase or renew plant-wide applicability limits; or process an expired plant-wide applicability limit: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers up to seventy-nine hours of staff time to increase, renew or process a retired plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above seventy-nine hours.

#### **Other fees.**

(15) Second tier review (WAC 173-460-090): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

(b) A second tier petition that becomes subject to third tier review during the course of evaluation continues as a second tier petition for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed one hundred six hours.

(16) Third tier review (WAC 173-460-100): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and third tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

(b) This fee does not apply to a second tier petition that becomes a third tier petition.

(17) Ecology may enter into a written cost-reimbursement agreement with an applicant as provided in RCW 70.94.085. Ecology will be reimbursed at a rate of ninety-five dollars per hour.

(18) Small business fee reduction. The new source review fee identified in subsections (2) through (7) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If, due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim

of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(19) Fee reductions for pollution prevention initiatives. Ecology may reduce the fees defined in subsections (2) through (7) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

(20) Tracking revenues, time, and expenditures. Ecology must track revenues collected under this subsection on a source-specific basis.

(21) Periodic review. To ensure that fees cover the cost of processing the actions in this section, ecology shall review and update this section as necessary.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-455-110	Registration fees for sources emitting gas vapors.
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**WSR 12-17-128**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed August 21, 2012, 1:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-042.

Title of Rule and Other Identifying Information: WAC 458-20-10003 Brief adjudicative proceedings for matters related to suspension, nonrenewal, and nonissuance of licenses to sell spirits.

Hearing Location(s): Capitol Plaza Building, 4th Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA, on September 25, 2012, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: October 5, 2012.

Submit Written Comments to: Tim Jennrich, P.O. Box 47453, Olympia, WA 98504-7453, e-mail timje@dor.wa.gov, by September 25, 2012.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 39, Laws of 2012, (HB 2758) changed the department of revenue's (department) ability to collect spirits taxes imposed under RCW 82.08.150 by authorizing it to request that the Wash-

ington state liquor control board suspend, not renew, or not issue licenses to sell spirits in Washington for delinquency in reporting or remitting spirits taxes after department notice to a taxpayer. The department is proposing a new rule, WAC 458-20-10003, to establish brief adjudicative proceedings for review of the department's notice prior to any department request for suspension, nonrenewal, or nonissuance consistent with HB 2758.

Reasons Supporting Proposal: To explain the process by which a taxpayer may seek administrative review of the department's notice to the taxpayer that the department intends to request that the board suspend, refuse to renew, or refuse to issue a spirits license.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Chapter 39, Laws of 2012, (HB 2758).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Jennrich, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1578; Implementation: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Russ Brubaker, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1505.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

August 21, 2012

Alan R. Lynn

Rules Coordinator

### NEW SECTION

**WAC 458-20-10003 Brief adjudicative proceedings for matters related to suspension, nonrenewal, and nonissuance of licenses to sell spirits. (1) Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this section, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department notice explained in subsection (2) of this section. The department must provide the notice before it may proceed in requesting that the Washington liquor control board (board) suspend, not renew, or not issue a taxpayer's spirits license(s) as defined in RCW 66.24.010 (3)(c), referred to in this section as "agency action."

This section explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) **Department notice.** If a taxpayer is more than thirty days delinquent in reporting or remitting spirits taxes on a tax return or assessed by the department, including applicable

penalties and interest, the department may request that the board suspend the taxpayer's spirits license or licenses and refuse to renew any existing spirits license held by the taxpayer or issue any new spirits license to the taxpayer. Before the department may take agency action, the department must provide the taxpayer with at least seven calendar days prior written notice of the delinquency and inform the taxpayer that the department intends to make the request to the board. The department notice must include:

- (a) A listing of any unfiled tax returns;
- (b) The amount of unpaid spirits taxes as applicable, including any applicable penalties and interest;
- (c) Who to contact to inquire about payment arrangements; and
- (d) Information that the taxpayer may seek administrative review of the department notice, including the deadline for seeking such review.

A taxpayer may seek an administrative review of the department notice as explained under subsection (3) of this section. Brief adjudicative proceedings under this section do not include the right to challenge the amount of any spirits taxes assessed by the department.

**(3) Conduct of brief adjudicative proceedings.** To initiate an appeal of a department notice, the taxpayer has seven calendar days from the date on the department notice to request a review of that notice. The taxpayer must file a written notice of appeal explaining why the taxpayer disagrees with the notice of delinquency.

A form notice of appeal is available at <http://dor.wa.gov> or by calling 1-800-647-7706. The completed form should be mailed or faxed to the department at:

Department of Revenue  
Compliance Administration  
Spirits License Suspension Petition  
P.O. Box 47473  
Olympia, WA 98504-7473  
Fax: 360-586-8816

(a) A presiding officer, who will be either the assistant director of the compliance division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the taxpayer or the taxpayer's representative may include written documentation explaining the taxpayer's view of the matter. The presiding officer may also request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within ten days of receipt of the taxpayer's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final

order unless a petition for review is made to the department's appeals division under subsection (4) of this section. If the presiding officer's order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

**(4) Review of initial order from brief adjudicative proceeding.** A taxpayer that has received an initial order upholding a department notice under subsection (3) of this section may request a review by the department by filing a written petition for review or by making an oral request for review with the department's appeals division within twenty-one days after the service of the initial order on the taxpayer as described in subsection (8) of this section.

A form petition of review is available at <http://dor.wa.gov>. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the appeals division are:

Appeals Division "Spirits License Petition for Review/  
Spirits Taxes"  
Department of Revenue  
P.O. Box 47460  
Olympia, WA 98504-7460  
Telephone Number: 360-534-1335  
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the appeals division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within twenty days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(d) A request for review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed.

**(5) Record in brief adjudicative proceedings.** The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.485 related to department notice will consist of:

(a) *The record before the presiding officer:* The record before the presiding officer consists of the department notice; the taxpayer's appeal of the department notice; all records relied upon by the department or submitted by the taxpayer related to the department notice; and all correspondence between the taxpayer and the department regarding the department notice.

(b) *The record before the reviewing officer:* The record before the reviewing officer consists of all documents

included in the record before the presiding officer; the taxpayer's petition for review; and all correspondence between the taxpayer and the department regarding the taxpayer's petition for review.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this section or by the presiding officer or reviewing officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. This subsection does not apply with respect to computation of the seven calendar days required for the department notice.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (4) of this section.

(h) Where proof of service is required, the proofs of service must include:

- (i) An acknowledgment of service;
- (ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant, in their sole discretion, a request for a con-

tinuance by motion of the taxpayer, the department, or on its own motion.

(10) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(11) **Taking agency action.** The department may initiate agency action as follows:

(a) If the taxpayer does not file a timely appeal under subsection (3) of this section, the department may proceed with agency action the day following the end of the period for requesting such appeal;

(b) If the taxpayer does not make a petition of review consistent with subsection (4) of this section, the department may proceed with agency action the day following the end of the period for making such petition of review;

(c) If the department makes a final order adverse to the taxpayer under subsection (4) of this section, the department may proceed with agency action the day following the date the department issues its final order.

## WSR 12-17-131

### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

[Filed August 21, 2012, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-039.

Title of Rule and Other Identifying Information: The operations support and services division, background check central unit, is proposing to add a new section to chapter 388-06 WAC and to amend the following sections related to division of developmental disabilities (DDD) long-term care fingerprint check requirements and one hundred twenty-day provisional hire: WAC 388-06-0020, 388-06-0110, 388-06-0130, 388-06-0150, 388-06-0525, and 388-06-0540.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at

<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on September 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 26, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 25, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 4, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-06 WAC and adding a new section related [to] DDD long-term care fingerprint check requirements and one hundred twenty-day provisional hire. Revisions are necessary to implement Initiative 1163, passed by the voters on November 8, 2011, and ESHB 2314, signed into law on March 29, 2012. ESHB 2314 amends Initiative 1163 and chapters 74.39A, 18.20, and 43.20A RCW to require fingerprint-based background checks for long-term care workers beginning January 7, 2012.

Reasons Supporting Proposal: Initiative 1163 as subsequently amended by ESHB 2314 requires implementation of the long-term care fingerprint check requirements beginning January 7, 2012 (unless otherwise specified). Rule revisions are necessary to clarify the new fingerprint check requirements for long-term care workers contracted, hired, or otherwise authorized by DDD and to clarify when a one hundred twenty-day provisional hire is allowed pending the outcome of a fingerprint check. Emergency rules were filed to implement Initiative 1163 as WSR 12-03-049. A new emergency superseding the previous filing was filed as WSR 12-10-095 to implement ESHB 2314 on May 2, 2012.

Statutory Authority for Adoption: RCW 43.43.832 and 74.39A.056.

Statute Being Implemented: RCW 43.43.837, 74.39A.-056, 74.39A.261, 43.20A.710.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, background check central unit, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cindy LaRose-Eatwell, P.O. Box 45025, Olympia, WA 98504-5025, (360) 725-8072.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule revision is exempt under RCW 19.85.025(3). Rule amendments are explicitly and specifically dictated by statute or rule amendments clarify language without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. This rule revision is exempt from preparing further analysis under RCW 34.05.328 (5)(b)(iv) and (v), rule content is explicitly and specifically dictated by statute or rule amendments clarify language without changing the effect.

August 14, 2012  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter?** The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

**"Authorized"** or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

**"CA"** means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

**"Certification"** means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

**"Children"** and **"youth"** are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect; or

(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility.

**"Civil adjudication proceeding"** is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

**"Community residential service businesses"** include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.

**"DCFS"** means division of children and family services and is a division within children's administration that pro-

vides child welfare, child protective services, and support services to children in need of protection and their families.

"**DDD**" means the division of developmental disabilities, department of social and health services (DSHS).

"**DLR**" means the division of licensed resources that is a division within children's administration, the department of social and health services.

"**Department**" means the department of social and health services (DSHS).

"**I**" and "**you**" refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"**JRA**" means the juvenile rehabilitation administration, department of social and health services.

"**Licensor**" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

"**Individual provider**" as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

"**Individuals with a developmental disability**" means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

"**Long-term care worker**" has the same meaning as defined in RCW 74.39A.009.

"**Spousal abuse**" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"**Unsupervised**" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"**Unsupervised access**" means that an individual will or may be left alone with a child or vulnerable adult (individual

with developmental disability) at any time for any length of time.

"**We**" refers to the department, including licensors and social workers.

"**WSP**" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0110 Who must have background checks?** (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) ~~((Per RCW 74.39A.055, the department requires state and federal background checks on all long-term care workers for the elderly or persons with disabilities hired or contracted after January 1, 2012.~~

~~(a) This does not include long-term care workers qualified and contracted or hired on or before December 31, 2011. Parents are not exempt from the long-term care background check requirements.)~~ As described in WAC 388-06-0115, the division of developmental disabilities requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who is qualified by DDD to have unsupervised access to individuals with developmental disabilities.

(3) Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks. For individual providers and home care agency providers refer to WAC 388-71-0500 through 388-71-05909. For adult family homes refer to chapter 388-76 WAC, adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, assisted living licensing rules.

(4) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

#### NEW SECTION

**WAC 388-06-0115 What are the division of developmental disabilities background check requirements?** (1)

Per RCW 74.39A.056, long-term care workers undergoing a background check for initial hire or initial contract will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in WAC 388-06-0115 (a) and (b). Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016 community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(ii) Individuals who have lived outside of Washington state within the past three years consecutive will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016 community residential service businesses as defined above will be screened as described in WAC 388-06-0115(1).

(2) The division of developmental disabilities requires rechecks for all DDD contracted providers and their employees at least every three years or more frequently if required by program rule. Rechecks will be conducted as follows:

(a) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three consecutive years will be screened through a state name and date of birth check and a national fingerprint-based background check.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability?**

(1) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children or individuals with a developmental disability that are processed by the children's administration after the effective date of this chapter.

(2) For the division of developmental disabilities these regulations apply to ~~((any of the following that may involve unsupervised access to children and individuals with a developmental disability:~~

~~(a)) initial contracts((=licenses or certifications)) and renewals as required by the applicable DDD background check renewal schedule and program regulations((=and~~

~~(b) Any contract, license or certification renewal when there was a lapse of one day or more following expiration)).~~

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0150 What does the background check cover?** (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three consecutive years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(5) The division of developmental disabilities requires fingerprint-based background checks ~~((for all long-term care workers as defined in RCW 74.39A.009(16) hired or contracted on or after January 1, 2012))~~ as described in WAC 388-06-0115. These background checks ~~((must))~~ include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire?** (1) Individuals are eligible for the one hundred twenty-day provisional hire immediately, except as provided under subsection (2) of this section and WAC 388-06-0540. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

(2) Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based back-

ground check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available?** The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

- (1) An initial license;
- (2) An initial contract; ((~~or~~))
- (3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671 (a)(20)); or
- (4) Any other individual listed in the assisted living facility or adult family home license application, such as an adult family home entity representative or resident manager, or an assisted living facility administrator.

**WSR 12-17-132**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**

[Filed August 21, 2012, 3:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-064.

Title of Rule and Other Identifying Information: Amending WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement and 180-18-050 Procedure to obtain waiver (waivers from one hundred eighty-day school year requirement including waivers for purposes of economy and efficiency).

Hearing Location(s): Walla Walla Community College, 3020 East Isaacs Avenue, Walla Walla, WA 99632, on September 26, 2012, at 3:15 p.m.

Date of Intended Adoption: November 9, 2012.

Submit Written Comments to: Jack Archer, Washington State Board of Education, 600 Washington Street, P.O. Box 47206, Olympia, WA 98504-7206, e-mail jack.archer@k12.wa.us, fax (360) 586-2357, by October 26, 2012.

Assistance for Persons with Disabilities: Contact Jack Archer by September 24, 2012, TTY (360) 664-3631 or (360) 725-6035.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is first to meet the requirements of RCW 28A.305.140(2), which requires the state board of education (SBE) to adopt criteria to evaluate the need for a school district waiver under this section from the provisions of RCW 28A.150.200 through 28A.150.220, and 28A.305.141(3), which requires SBE to adopt criteria to evaluate requests for waivers for certain districts from the requirement of a minimum one hundred eighty day school year for purposes of economy and efficiency. The purpose is second to simplify

the procedure for obtaining waivers under RCW 28A.305.140 by eliminating lengthy provisions in WAC 180-18-050(3) for waivers that are excessively difficult for districts to implement and do not permit renewal. A further purpose is to provide an expedited process for the granting of one hundred eighty day waivers for the sole purpose of full-day, parent-teacher conferences. The proposal also makes necessary and appropriate corrections to WAC 180-18-040 and 180-18-050, removing obsolete provisions and amending other language to improve clarity and more closely reflect legislative intent.

Reasons Supporting Proposal: Adoption of this proposal assures compliance with RCW 28A.305.140, 28A.305.141, and 28A.655.180. It provides SBE with a formal basis for decisions on requests by school districts for waivers from minimum basic education program requirements. Through rule adoption SBE demonstrates that it is meeting its statutory duty to ensure compliance with minimum basic education program requirements. For school districts, it provides clarity on SBE evaluation of waiver requests and simplifies overly complex procedures in current rule for obtaining waivers. By creating a separate procedure for waivers for parent-teacher conferences, it reduces the confusion arising from inconsistency between the statutory definitions of "school day" and "instructional hours," and recognizes the importance of parental involvement to student achievement.

Statutory Authority for Adoption: RCW 28A.305.-140(2), 28A.305.141(3).

Statute Being Implemented: RCW 28A.305.140, 28A.-305.141, and 28A.655.180.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Archer, Old Capitol Building, 600 Washington Street, Olympia, WA 98504, (360) 866-0755; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street, Olympia, WA 98504, (360) 725-6025.

**SBE RULE CHANGE**  
**SCHOOL DISTRICT FISCAL IMPACT STATEMENT**

WSR 12-11-064	<b>Title of Rule:</b> Amending WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement; WAC 180-18-050 Procedure to obtain waiver, (waivers from one hundred eighty-day school year requirement including waivers for purposes of economy and efficiency); and new WAC 180-18-065 Waiver from one hundred eighty-day school year requirement for purposes of economy and efficiency—Criteria for evaluation of waiver requests.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI
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**Part I: Estimates:** No fiscal impact.

**Part II: Narrative Explanation**

**A - Brief Description of What the Measure Does That Has Fiscal Impact:** Office of superintendent of public instruction (OSPI) uses the WASBO Legislative Committee to gather input on costs for proposed legislation and rule changes. Fiscal impact for this rule change was requested on July 23, 2012. No fiscal impact was identified by either OSPI staff or school districts for this rule change.

**B - Cash Receipts Impact:** None.

**C - Expenditures:** None.

**Part III: Expenditure Detail**

**A - Expenditures by Object or Purpose:** None.

**Part IV: Capital Budget Impact:** None.

A cost-benefit analysis is not required under RCW 34.05.328. Not required.

August 21, 2012

Ben Barick

Executive Director

AMENDATORY SECTION (Amending WSR 10-23-104, filed 11/16/10, effective 12/17/10)

**WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement (~~and student-to-teacher ratio requirement~~).** (1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 and WAC 180-16-215 (~~(by)~~) while offering the equivalent in annual minimum (~~(program)~~) instructional hours (~~(offerings)~~) as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said (~~(initial)~~) waiver requests for up to three school years.

(2) (~~(A district that is not otherwise ineligible as identified under WAC 180-18-050 (3)(b) may develop and implement a plan that meets the program requirements identified under WAC 180-18-050(3) to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district.~~)

(3) ~~(A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which requires the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.)~~ The state board of edu-

cation, pursuant to RCW 28A.305.140(2), shall evaluate the need for a waiver based on whether:

(a) The resolution by the board of directors of the requesting district attests that if the waiver is approved, the district will meet the required annual instructional hour offerings under RCW 28A.150.220(2) in each of the school years for which the waiver is requested;

(b) The purpose and goals of the district's waiver plan are closely aligned with school improvement plans under WAC 180-16-220 and any district improvement plan;

(c) The plan explains goals of the waiver related to student achievement that are specific, measurable, and attainable;

(d) The plan states clear and specific activities to be undertaken that are based in evidence and likely to lead to attainment of the stated goals;

(e) The plan specifies at least one state or locally determined assessment or metric that will be used to collect evidence to show the degree to which the goals were attained;

(f) The plan describes in detail the participation of administrators, teachers, other district staff, parents, and the community in the development of the plan.

(3) In addition to the requirements of subsection (2) of this section, the state board of education shall evaluate requests for a waiver that would represent the continuation of an existing waiver for additional years based on the following:

(a) The degree to which the prior waiver plan's goals were met, based on the assessments or metrics specified in the prior plan;

(b) The effectiveness of the implemented activities in achieving the goals of the plan for student achievement;

(c) Any proposed changes in the plan to achieve the stated goals;

(d) The likelihood that approval of the request would result in advancement of the goals;

(e) Support by administrators, teachers, other district staff, parents, and the community for continuation of the waiver.

AMENDATORY SECTION (Amending WSR 10-23-104, filed 11/16/10, effective 12/17/10)

**WAC 180-18-050 Procedure to obtain waiver.** (1) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 (~~((1) and (3))~~) shall occur at a state board meeting prior to implementation. A district's waiver application shall (~~(be in the form of a resolution adopted by the district board of directors)~~) include, at a minimum, a resolution adopted by the district board of directors, an application form, a proposed school calendar, and a summary of the collective bargaining agreement with the local education association stating the number of professional development days, full instruction days, late-start and early-release days, and the amount of other noninstruction time. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution must include a statement attesting that the district will meet the minimum instructional

hours requirement of RCW 28A.150.220(2) under the waiver plan. The resolution shall be accompanied by information detailed in the guidelines and application form available on the state board of education's web site.

(2) The application for a waiver and all supporting documentation must be received by the state board of education at least ~~((fifty))~~ forty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

~~((3)(a) Under this section, a district meeting the eligibility requirements may develop and implement a plan that meets the program requirements identified under this section and any additional guidelines developed by the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 and WAC 180-16-215. The plan must be designed to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. This section will remain in effect only through August 31, 2018. Any plans for the use of waived days authorized under this section may not extend beyond August 31, 2018.~~

~~(b) A district is not eligible to develop and implement a plan under this section if:~~

~~(i) The superintendent of public instruction has identified a school within the district as a persistently low-achieving school; or~~

~~(ii) A district has a current waiver from the minimum one hundred eighty-day school year requirement approved by the board and in effect under WAC 180-18-040.~~

~~(c) A district shall involve staff, parents, and community members in the development of the plan.~~

~~(d) The plan can span a maximum of three school years.~~

~~(e) The plan shall be consistent with the district's improvement plan and the improvement plans of its schools.~~

~~(f) A district shall hold a public hearing and have the school board approve the final plan in resolution form.~~

~~(g) The maximum number of waived days that a district may use is dependent on the number of learning improvement days, or their equivalent, funded by the state for any given school year. For any school year, a district may use a maximum of three waived days if the state does not fund any learning improvement days. This maximum number of waived days will be reduced for each additional learning improvement day that is funded by the state. When the state funds three or more learning improvement days for a school year, then no days may be waived under this section.~~

Scenario	Number of learning-improvement days funded by state for a given school year	Maximum number of waived days allowed under this section for the same school year
A	0	3
B	1	2
C	2	1
D	3 or more	0

~~(h) The plan shall include goals that can be measured through established data collection practices and assessments. At a minimum, the plan shall include goal benchmarks and results that address the following subjects or issues:~~

~~(i) Increasing student achievement on state assessments in reading, mathematics, and science for all grades tested;~~

~~(ii) Reducing the achievement gap for student subgroups;~~

~~(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools);~~

~~(i) Under this section, a district shall only use one or more of the following strategies in its plan to use waived days:~~

~~(i) Use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance;~~

~~(ii) Use data from multiple measures to identify and implement comprehensive, research-based, instructional programs that are vertically aligned from one grade to the next as well as aligned with state academic standards;~~

~~(iii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students;~~

~~(iv) Implement strategies designed to recruit, place, and retain effective staff;~~

~~(v) Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;~~

~~(vi) Increase graduation rates through, for example, credit-recovery programs, smaller learning communities, and acceleration of basic reading and mathematics skills;~~

~~(vii) Establish schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff;~~

~~(viii) Institute a system for measuring changes in instructional practices resulting from professional development;~~

~~(ix) Provide ongoing, high-quality, job-embedded professional development to staff to ensure that they are equipped to provide effective teaching;~~

~~(x) Develop teacher and school leader effectiveness;~~

~~(xi) Implement a school-wide "response-to-intervention" model;~~

~~(xii) Implement a new or revised instructional program;~~

~~(xiii) Improve student transition from middle to high school through transition programs or freshman academies;~~

~~(xiv) Develop comprehensive instructional strategies;~~

(xv) ~~Extend learning time and community oriented schools.~~

(j) ~~The plan must not duplicate activities and strategies that are otherwise provided by the district through the use of late-start and early-release days.~~

(k) ~~A district shall provide notification to the state board of education thirty days prior to implementing a new plan. The notification shall include the approved plan in resolution form signed by the superintendent, the chair of the school board, and the president of the local education association; include a statement indicating the number of certificated employees in the district and that all such employees will be participating in the strategy or strategies implemented under the plan for a day that is subject to a waiver, and any other required information. The approved plan shall, at least, include the following:~~

~~(i) Members of the plan's development team;~~  
~~(ii) Dates and locations of public hearings;~~  
~~(iii) Number of school days to be waived and for which school years;~~

~~(iv) Number of late-start and early-release days to be eliminated, if applicable;~~

~~(v) Description of the measures and standards used to determine success and identification of expected benchmarks and results;~~

~~(vi) Description of how the plan aligns with the district and school improvement plans;~~

~~(vii) Description of the content and process of the strategies to be used to meet the goals of the waiver;~~

~~(viii) Description of the innovative nature of the proposed strategies;~~

~~(ix) Details about the collective bargaining agreements, including the number of professional development days (district-wide and individual teacher choice), full instruction days, late-start and early-release days, and the amount of other noninstruction time; and~~

~~(x) Include how all certificated staff will be engaged in the strategy or strategies for each day requested.~~

~~(l) Within ninety days of the conclusion of an implemented plan a school district shall report to the state board of education on the degree of attainment of the plan's expected benchmarks and results and the effectiveness of the implemented strategies. The district may also include additional information, such as investigative reports completed by the district or third party organizations, or surveys of students, parents, and staff.~~

~~(m) A district is eligible to create a subsequent plan under this section if the summary report of the enacted plan shows improvement in, at least, the following plan's expected benchmarks and results:~~

~~(i) Increasing student achievement on state assessments in reading and mathematics for all grades tested;~~

~~(ii) Reducing the achievement gap for student subgroups;~~

~~(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).~~

~~(n) A district eligible to create a subsequent plan shall follow the steps for creating a new plan under this section. The new plan shall not include strategies from the prior plan that were found to be ineffective in the summary report of the~~

~~prior plan. The summary report of the prior plan shall be provided to the new plan's development team and to the state board of education as a part of the district's notification to use a subsequent plan.~~

~~(o) A district that is ineligible to create a subsequent plan under this section may submit a request for a waiver to the state board of education under WAC 180-18-040(1) and subsections (1) and (2) of this section.) (3) Under this section, a district seeking to obtain a waiver of no more than five days from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 solely for the purpose of conducting parent-teacher conferences shall provide notification of the district request to the state board of education at least thirty days prior to implementation of the plan. A request for more than five days must be presented to the state board under subsection (1) of this section for approval. The notice shall provide information and documentation as directed by the state board. The information and documentation shall include, at a minimum:~~

~~(a) An adopted resolution by the school district board of directors which shall state, at a minimum, the number of school days and school years for which the waiver is requested, and attest that the district will meet the minimum instructional hours requirement of RCW 28A.150.220(2) under the waiver plan.~~

~~(b) A detailed explanation of how the parent-teacher conferences to be conducted under the waiver plan will be used to improve student achievement;~~

~~(c) The district's reasons for electing to conduct parent-teacher conferences through full days rather than partial days;~~

~~(d) The number of partial days that will be reduced as a result of implementing the waiver plan;~~

~~(e) A description of participation by administrators, teachers, other staff and parents in the development of the waiver request;~~

~~(f) An electronic link to the collective bargaining agreement with the local education association.~~

~~Within thirty days of receipt of the notification, the state board will, on a determination that the required information and documentation have been submitted, notify the requesting district that the requirements of this section have been met and a waiver has been granted.~~

## NEW SECTION

**WAC 180-18-065 Waiver from one hundred eighty-day school year requirement for purposes of economy and efficiency—Criteria for evaluation of waiver requests.** (1) In order to be granted a waiver by the state board of education under RCW 28A.305.141 to operate one or more schools on a flexible calendar for purposes of economy and efficiency, a school district eligible for such waiver must meet each of the requirements of RCW 28A.305.141(2).

(2) In the event that a greater number of requests for waivers are received that meet the requirement of subsection (1) of this section than may be granted by the state board of education under RCW 28A.305.141(3), priority shall be given to those plans that best redirect monetary savings from the proposed flexible calendar to support student learning.

WSR 12-17-138
PROPOSED RULES
STATE BOARD OF HEALTH
[Filed August 21, 2012, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-147.

Title of Rule and Other Identifying Information: Chapter 246-291 WAC proposing amendments to Group B public water systems. The 2009 legislature eliminated department of health (department) funding for the Group B program and amended RCW 43.20.050 and chapter 70.119A RCW directing the state board of health (board) to adopt rules to: Establish minimum design and construction standards for Group B systems; allow the board to waive requirements for systems with fewer than five connections; and allow local governments to establish regulations that are more stringent than state standards.

Hearing Location(s): Washington State Capitol [Capitol] Campus, John A. Cherberg Building, Senate Hearing Room 3, on October 10, 2012, at 1:15 p.m.

Date of Intended Adoption: October 10, 2012.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47822, Olympia, WA 98504-7822, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2252, by September 25, 2012.

Assistance for Persons with Disabilities: Contact Desiree Robinson by September 10, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal shifts the regulatory framework of chapter 246-291 WAC to align the rules with the department's capacity to implement the rules. The proposed rules strengthen water system design and construction standards for new and expanding systems, strengthen new source water approval requirements, set more stringent water quality and quantity standards, improve public notification requirements, eliminate ongoing monitoring requirements, provide local governments flexibility to set more stringent standards, and allow local governments to waive certain requirements under specific conditions.

Reasons Supporting Proposal: The 2009 legislature eliminated funding for the Group B program and directed the board to amend chapter 246-291 WAC as required by ESSB 6171. This proposed rule revision is necessary to implement these statutory requirements.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: Chapter 70.119A RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Christensen, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3153.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Section 1. What Is the Scope of the Proposed Rule Package? The primary purpose of the rule making is to meet the objective of the preproposal statement of inquiry (CR-101), and include changes to chapter 246-291 WAC, Group B public water systems, to be consistent with legislative intent. The proposal requires new and expanding Group B systems to:

- Meet water quality standards without needing treatment;
Use a drilled well for the source of supply; and
Follow more rigorous design and construction standards.

Under the proposal, all Group B systems must comply with more stringent public notification requirements when serious public health risks exist.

The proposal also:

- Includes editorial changes so that requirements are more clear and understandable;
Clarifies roles and authority of the department and LHJs;
Updates language to mirror national standards that have been adopted in other rules (primarily in chapter 246-290 WAC); and
Updates or removes obsolete references.

The proposal represents a shift in the regulatory framework that aligns the Group B chapter with the department's ability to implement it. The scope of this proposal extends to all Group B water systems in Washington state. Purveyors of Group B systems and their customers will be directly affected by these changes.

Section 2. Which Businesses Are Impacted by the Proposed Rule Package? What Are Their North American Industry Classification System (NAICS) Codes? What Are Their Minor Cost Thresholds? There is one NAICS business code that applies to the proposal. Because most purveyors of Group B systems do not identify themselves primarily as a Group B system, the number of systems found in the state database is a small fraction of the total number of Group B systems in Washington state.

Table with 7 columns: NAICS code, NAICS code description, Total establishments, Minor cost threshold (1% of annual payroll), Minor cost threshold (3/10% of receipts), Number of establishments by employment size (49 and fewer, 50 and greater). Row 1: 221310, Water supply and irrigation systems, 159, \$1,295, No information available, 159, 0.

**Section 3. What Is the Average Cost per Business of the Proposed Rule? WAC 246-291-060 Waivers,** the proposed section provides authority to the local health officer or local board of health to grant waivers, but does not provide authority for the department or the board to grant waivers.

In counties in which the LHM has accepted primary responsibility for implementing chapter 246-291 WAC or has developed a local ordinance, the local health officer or local board of health may grant a waiver to a purveyor of a proposed Group B system from the requirements of this chapter, except in calculating residential population<sup>1</sup>.

When a new or expanding Group B system cannot meet the proposed requirements for approval, the purveyor can request a waiver from a local board of health or health officer. Specific conditions outlined in this section must be met before a local health officer or board of health may grant a waiver. Conditions for a purveyor to obtain a waiver include, at a minimum:

- The local board of health or health officer must condition the approval by requiring the new or expanding Group B system to provide water quality treatment, monitor and report the quality of water to document that drinking water standards are not exceeded;
- The local board of health or health officer must condition the approval by requiring appropriate operations and maintenance; and
- The LHM must provide ongoing oversight.

**Cost:** The proposed section does not create new treatment requirements. The only cost to purveyors seeking a waiver is the cost that the local board of health or health officer charges for processing the request. The cost of a waiver fee ranges from a nominal cost to \$760<sup>2</sup>.

**WAC 246-291-120 Design report approval,** the proposed section includes two significant changes.

1. It eliminates the requirement for existing Group B systems to submit a water system plan update or design report for changes to the system that do not change the number of approved service connections.

2. It requires Group B systems intending to expand the number of approved service connections to complete and submit all documentation required for approval of a new water system under this chapter.

**Cost:** Under the proposed section, purveyors intending on expanding their systems will incur higher costs to obtain a complete new system approval for the expansion than they would have for submitting a design report under the current rules. But, many of the documents for the new system approval would not need to be generated because the information is the same as when the system was approved (for example, site maps). This results in higher costs than under the current rules, but lower than a complete new Group B system approval. Under the proposed section, the probable new cost for creating a Group B system submittal ranges from \$1,000 to \$3,000 more than the cost of meeting requirements under current rules.<sup>3</sup>

**WAC 246-291-125 Groundwater source approval,** this proposed section establishes requirements for drinking water sources used for new and expanding Group B systems.

It incorporates requirements that previously had been in WAC 246-291-040 and 246-291-100. The proposed section contains several significant changes.

1. A source for a new or expanding Group B system must be a groundwater source from a properly constructed drilled well. Dug wells, groundwater under the influence of surface water (GWI) and surface water sources cannot be used.

2. A source for a new or expanding Group B system must meet minimum supply requirements, producing at least seven hundred fifty gallons per day (gpd) per residential connection for systems in western Washington and 1,250 gpd per residential connection for systems in eastern Washington.

3. Before submitting the system design to the department for approval, a potential GWI source for a new or expanding Group B system must be evaluated to determine whether the source is or is not GWI.

**Cost:** A purveyor of a new or expanding Group B system could incur additional costs if the purveyor intended to use a dug well, GWI or surface water source. Because the proposed section requires a purveyor to use a drilled well instead of a dug well or surface water source, the difference between the costs of a drilled well and the costs of a dug well or a surface water source represents a new cost associated with the proposed section.

The cost of a new well varies, depending mostly on the well depth. Most well drillers charge a set-up fee to pay the expense of getting the well drilling rig on site, a minimum charge for drilling a shallow well (usually fifty feet), and then a per foot cost beyond the minimum. A twenty to forty foot deep dug well can cost between \$5,000 and \$8,000<sup>4</sup>.

The costs of a drilled and dug well meeting current well construction standards (chapter 173-160 WAC) vary greatly depending on site-specific conditions, which confound the assessment of the cost differences between them. Most often, a purveyor drilling a well will have the well drilled deeper and obtain water from a more protected aquifer.

A review of the well depths reported for current Group B water systems in the department's records shows an average depth of one hundred seventy-five feet, with a range from twenty feet to over four hundred feet. Using the average well depth provides a cost approximation of a typical drilled well of between \$8,000 and \$20,000<sup>5</sup>. This estimate of a typical cost range for the average new drilled well will be used throughout the remainder of this analysis.

Most dug wells (allowed under the current rules) require water quality treatment because the shallow aquifer typically contains bacteria and other contaminants. Disinfection using chlorine injection is generally the most inexpensive method of treatment. The capital costs typically range from \$1,000 to \$1,500 and annual operations and maintenance (O&M) can cost \$200 to \$400 per year.

The cost of a surface water source (allowed under the current rules) with current surface water treatment in part six of chapter 246-290 WAC should be compared to the costs of a drilled well. The cost of a surface water source varies greatly, depending on the conditions on the site and quality of the water that determine the appropriate treatment technology. For a Group B system, the minimum costs are over \$50,000 plus O&M costs.<sup>6</sup> Clearly, after accounting for treatment costs, using a drilled well is more cost effective than

complying with all current requirements for systems using a surface water source.

A purveyor of a new or expanding Group B system will incur additional cost if the purveyor intends to use a drilled well that does not meet the minimum supply requirements. In those cases, the purveyor would need to drill a new well for additional supply, or obtain water from an intertie with another public water system. Based on department records, fewer than two percent of sources for existing Group B systems would not supply a minimum of seven hundred fifty gpd for a typical six-connection system. However, the department's records are not complete, with about ten percent of systems not having a source capacity listed.

The typical cost range for an average depth well (one hundred seventy-five feet) ranges between \$8,000 and \$20,000.<sup>7</sup> The cost of obtaining water through an intertie can vary greatly, and would not be a flat cost, but a monthly or yearly charge based on a long-term agreement.

**New WAC 246-291-135 Interties**, the proposed section establishes standards for purveyors of new and expanding Group B systems intending to use an intertie source. An intertie is a physical connection between two public water systems. Most commonly, a Group A system will provide water to a Group B system under terms of an intertie (or a "wholesale") agreement.

**Cost:** Typically, a wholesale water system already requires a signed agreement that establishes terms and conditions for service meeting the requirements that exist in WAC 246-290-132 for Group A water systems. Depending on if the purveyor of the Group B system uses an attorney to review and approve the agreement and other documents, the cost of producing the required documents can be from nominal costs to \$1,000.<sup>8</sup>

**WAC 246-291-140 Water system planning and disclosure requirements**, the proposed section requires additional water system planning and disclosure documents to be submitted by a purveyor of a new or expanding Group B system.

- A purveyor must submit disclosure language to the department for review and approval as a part of the Group B system design submittal.
- A purveyor must record the approved disclosure language on the property title for all properties to be served by the Group B system.

**Cost:** Many counties in Washington have similar fee structures for recording documents. In those counties, the cost of recording the first page to the property title is \$62. Each additional page costs \$1. The proposed requirements would require recording up to thirty pages on the property title, depending on how many parcels the system will serve. Overall, the costs of the notification requirements would typically range between \$70 and \$100.

**WAC 246-291-170 Water quality requirements for groundwater source approval**, the proposed section incorporates water quality requirements from current rules that apply to the design and approval of a new or expanding Group B water system, including WAC 246-291-320(2), 246-291-330 and 246-291-350(1). The proposed section also

makes significant changes to the water quality requirements for only new or expanding Group B systems. The proposal:

1. Eliminates the drinking water standard for nickel;
2. Strengthens the primary drinking water standard for arsenic from fifty micrograms per liter to ten micrograms per liter for new or expanding systems;
3. Requires purveyors to submit two coliform samples for a new or expanding Group B system design approval; and
4. Prohibits use of a source that exceeds a primary drinking water standard. Sources for new and expanding Group B systems cannot rely on treatment to meet primary drinking water standards.

**Cost:** A purveyor of a new or expanding Group B system could incur additional costs from the proposed section if the purveyor drills a well that exceeds the new arsenic standard. A purveyor intending to use a source that does not meet the arsenic standard can drill a new well, develop a one or two connection system without treatment or water quality monitoring, or develop a Group A system with treatment, operations and water quality monitoring as required under chapter 246-290 WAC.

Requiring one extra sample will cost a purveyor of a new Group B system between \$30 and \$40 for sample analysis, depending on what a laboratory typically charges for coliform analysis.

A purveyor of a new or expanding Group B system could incur additional costs from the proposed section if the proposed source does not meet primary drinking water standards. In those cases, the purveyor would need to drill a new well that meets standards, obtain water from an intertie with another public water system, or use the well for a Group A system with treatment, operations and monitoring as required under chapter 246-290 WAC.

Sometimes, if a well is contaminated with bacteria or nitrate, the problem can be resolved with the construction of a new well or deepening the existing well to obtain water from a more protected aquifer. Using the average well depth of one hundred seventy-five feet, the cost of a typical drilled well is between \$8,000 and \$20,000<sup>9</sup>.

There are cases when a purveyor will not be able to drill a new well that meets primary drinking water standards. For example, some geologic formations create high arsenic levels in groundwater supplies, and any well drilled in the affected area would exceed the primary drinking water standard.

The cost of obtaining water through an intertie can vary greatly, and would not be a flat cost, but a monthly or yearly charge based on a long-term agreement. As analyzed under WAC 246-291-135, intertie agreement costs can range from nominal costs up to \$1,000.

Another option for a purveyor would be to create a new Group A system, and meet the requirements of chapter 246-290 WAC that allows for water quality treatment with requirements for appropriate planning, engineering and monitoring. The cost for the design and construction of a system meeting planning, engineering and design standards in chapter 246-290 WAC ranges between \$30,000 to \$50,000.<sup>10</sup>

**WAC 246-291-200 Design standards**, the proposed section modifies design standards for new or expanding Group B systems. A purveyor must design a system using:

1. Minimum residential population calculations;

2. Minimum water supply design requirements; and
3. Updated Design Standard References.

Planning, design, and construction of a new or expanding Group B system that serves ten to fourteen residential service connections using Group A system standards cost about \$14,000 to \$27,000 more than complying with the requirements under the current Group B chapter.<sup>9</sup>

This proposed requirement results in minimal implementation costs to new or expanding systems. Group B system storage requirements are more a function of a system's need to meet peak hourly demand (PHD) requirements; those requirements have not changed in the proposal.

**WAC 246-291-280 Existing Group B systems, replaces WAC 246-291-130 Existing system approval.** The proposed section incorporates the intent of WAC 246-291-130 Existing system approval, and establishes more specific requirements. The proposed section provides a route for purveyors of Group B systems created before the final adoption of this proposal to obtain a status of "adequate for existing uses" if the system did not have prior department design approval.

The proposed section includes one nonsignificant change. The proposed section authorizes purveyors of Group B systems that obtained departmental approval under current rules to provide service to additional connections, up to the total number of approved connections, without having to meet proposed requirements.

**Cost:** To meet the requirements of the proposed section, a purveyor could have to spend three to twenty hours reviewing the system's water well report, inspecting and assessing the well site for potential sources of contamination, and obtaining updated water quality samples.

The labor costs for assessing a Group B system's adequacy could range from \$300 to \$2,000 depending on:

- How much documentation exists;
- How much field work would need to be done; and
- If an engineer or designer would be required to complete and submit documentation.

Sample analysis would range from \$400 to \$500.<sup>11</sup>

**WAC 246-291-360 Public notification,** the proposed section includes significant changes for public notification requirements related to monitoring, including requirements for a purveyor to:

- Notify consumers served by the systems and provide information within thirty days if they are required to monitor for water quality under WAC 246-291-300;
- Notify consumers within twenty-four hours if a sample contains *E. coli* or has a nitrate level greater than ten milligrams per liter;
- Notify consumers served by the system within thirty days if the system has an arsenic level greater than ten micrograms per liter; and
- Use specific language for a consumer notice.

**Cost:** In general, the proposed section will not increase costs to purveyors. There could be minor costs for a purveyor required to deliver a public notice within twenty-four hours instead of thirty days. For example, a purveyor who lives in

a primary residence away from the Group B system may have to drive some distance to deliver the required notification. In this case, the purveyor would incur costs for fuel and time spent in transit. However, the purveyor could rely on e-mail, fax or one of the system consumers to deliver the notice at a minimal cost.

The additional information required for public notification result in no additional cost to purveyors. Overall, the additional information required to be included in the public notice will be less than \$100 (if required to drive to deliver notice).

**Section 4. Does the Rule Impose More than Minor Costs on Impacted Businesses?** Does the average cost per business exceed both of the minor cost thresholds? Yes. The compliance cost is expected to exceed the annual payroll minor cost threshold for some businesses with new or expanding systems.

**Section 5. Does the Rule Have a Disproportionate Impact on Small Businesses?** Yes. The rule may have a disproportionate impact on some small businesses.

**Section 6. Did We Make an Effort to Reduce the Impact of the Rule?**

**A. Did we reduce, modify, or eliminate substantive regulatory requirements?** Yes. The proposal eliminates ongoing monitoring requirements for more than thirteen thousand Group B systems. The proposal retains authority for the department to require monitoring for instances when it is necessary to protect public health and safety.

**B. Did we simplify, reduce, or eliminate record-keeping and reporting requirements?** Yes. The proposal eliminates record-keeping and reporting requirements. If monitoring is conducted, under either department direction or their own volition, purveyors must provide results to system consumers and the department.

**C. Did we reduce the frequency of inspections?** Yes. All routine inspections are eliminated under the proposal.

**D. Did we delay compliance timetables?** No.

**E. Did we reduce or modify fine schedules for non-compliance?** Yes. The proposal modifies enforcement provisions to reference only statutory obligations.

**F. Did we create or implement any other mitigation techniques?** No.

**G. If you answered "No" for the previous six questions, please explain why it is not "legal or feasible" to implement any of these mitigation techniques.** Not applicable.

**Section 7. Did We Involve Small Businesses in the Rule Development Process?** Department staff met with a representative from the Association of Washington Business [Businesses], and solicited comments on behalf of that organization, which represents both small and large business interests. The department held four public workshops and solicited input from small business and the public at large, and also met with various stakeholder groups to get feedback on the rule:

- Association of realtors.
- Association of counties.
- Building industry association of Washington.
- Drilling and groundwater association.
- Plumbing and pipefitters union.

- Public utility district association.
- Water supply advisory committee.
- Washington water utility council.

**Section 8. Will Businesses Have to Hire or Fire Any Employees Because of the Requirements in the Rule?**  
There will not be any jobs created or lost as a result of the proposed rules.

<sup>1</sup>In the design of a new or expanding Group B system, a purveyor must calculate residential population based on the statewide office of financial management average household population, which is 2.5 persons per household (WAC 246-291-200(2)). No waivers can be provided to this requirement.

<sup>2</sup>Summary of data gathered from nine LHJs.

<sup>3</sup>Based on information from a survey of consulting engineers. See Appendix B of the preliminary significant analysis for more information.

<sup>4</sup>Costs obtained from a survey of licensed well drillers. See Appendix B of the preliminary significant analysis for a summary of responses.

<sup>5</sup>Cost estimate based on a survey of consulting engineers. See Appendix B of the preliminary significant analysis for more information.

<sup>6</sup>Based on estimates from EPA-600/2-79-162a, August 1999.

<sup>7</sup>Costs obtained from a survey of licensed well drillers. See Appendix B of the preliminary significant analysis for a summary of responses.

<sup>8</sup>Based on an estimate of up to three hours of attorney time plus document production costs.

<sup>9</sup>Cost estimate based on a survey of consulting engineers, and information on nitrate treatment costs from the office of drinking water Yakima Watershed nitrate treatment project. See Appendix B of the preliminary significant analysis for more information.

<sup>10</sup>Cost estimate based on a survey of consulting engineers. See Appendix B of the preliminary significant analysis for more information.

<sup>11</sup>Based on costs obtained from department staff to conduct on-site investigations and system evaluation, hourly rates charged by satellite management agencies, and information from a telephone survey of analytical laboratory costs. See Appendix B of the preliminary significant analysis for more information.

A copy of the statement may be obtained by contacting Theresa Phillips, Department of Health, P.O. Box 47822, Olympia, WA 98504-7822, phone (360) 236-3147, fax (360) 236-2252, e-mail [theresa.phillips@doh.wa.gov](mailto:theresa.phillips@doh.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Theresa Phillips, Department of Health, P.O. Box 47822, Olympia, WA 98504-7822, phone (360) 236-3147, fax (360) 236-2252, e-mail [theresa.phillips@doh.wa.gov](mailto:theresa.phillips@doh.wa.gov).

August 21, 2012  
Michelle A. Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-001 Purpose and scope.** (1) The purpose of ~~((these rules))~~ this chapter is to ~~((define basic regulatory requirements to))~~ protect the health of consumers ~~((using))~~ by establishing minimum design, construction, and other standards for Group B public drinking water ~~((supplies))~~ systems. ~~((These rules are specifically designed to ensure the provision of high quality drinking water in a reliable manner and in a quantity suitable for intended use.))~~

~~((The rules set forth are adopted under chapter 43.20 RCW and owners of Group B public water systems shall be responsible for ensuring compliance with these rules.))~~ This chapter is adopted under chapter 43.20 RCW. A purveyor of a Group B public water system shall comply with this chapter and rules adopted by a local board of health under RCW 70.05.060 or 70.46.060 as applicable.

(3) Other statutes relating to this chapter are:

(a) RCW 43.20B.020, Fees for services—Department of health and department of social and health services;

(b) Chapter 43.70 RCW, Department of health;

~~((Chapter 70.05 RCW, Local health departments, boards, officers—Regulations;~~

~~((d)))~~ Chapter 70.116 RCW, Public Water System Coordination Act of 1977; and

~~((e)))~~ (d) Chapter 70.119A RCW, Public water systems—Penalties and compliance.

~~((3))~~ Prior to expanding a Group B public water system to a Group A public water system, the entire system shall be brought into compliance with chapter 246-290 WAC.)

#### NEW SECTION

**WAC 246-291-005 Applicability.** (1) The rules of this chapter apply to a Group B public water system that provides drinking water to fewer than fifteen service connections and:

(a) Fewer than twenty-five people per day; or

(b) Twenty-five or more people per day for fewer than sixty days per year, provided the system does not serve one thousand or more people for two or more consecutive days.

(2) The rules of this chapter do not apply to a Group B system that:

(a) Consists only of distribution or storage facilities and does not have any source or treatment facilities;

(b) Obtains all water from, but is not owned by, a public water system where the rules of this chapter or chapter 246-290 WAC apply; and

(c) Does not sell water directly to any person.

(3) The rules of this chapter do not apply to a Group B system that provides water to one or two service connections, except:

(a) In a county in which a local board of health has adopted requirements for Group B systems with one or two service connections; or

(b) When the department determines that it is necessary to protect public health and safety, such as if the system serves a connection with a use listed under WAC 246-291-010 (62)(a) through (g).

(4) A proposed Group B system shall meet planning, engineering, and design requirements under WAC 246-290-100 through 246-290-250 if:

(a) The design submitted under WAC 246-291-120 proposes to supply water to another public water system and the combined number of service connections or total population served meets the definition of a Group A public water system; or

(b) The proposed system is being designed to serve ten to fourteen residential service connections using average household population standards as required under WAC 246-291-200(2).

AMENDATORY SECTION (Amending WSR 95-20-078, filed 10/4/95, effective 11/4/95)

**WAC 246-291-010 Definitions, abbreviations, and acronyms.** ((Abbreviations:

~~CSE~~—comprehensive system evaluation;

~~GWI~~—ground water under the direct influence of surface water;

~~m~~—meter;

~~MCL~~—maximum contaminant level;

~~mg/L~~—milligrams per liter;

~~ml~~—milliliter;

~~mm~~—millimeter;

~~NTU~~—nephelometric turbidity unit;

~~psi~~—pounds per square inch;

~~umhos/cm~~—micromhos per centimeter;

~~VOC~~—volatile organic chemical;

~~WFI~~—water facilities inventory form; and

~~WHPA~~—wellhead protection area.

**"Authorized agent"** means any person who:

Makes decisions regarding the operation and management of a public water system whether or not he or she is engaged in the physical operation of the system;

Makes decisions whether to improve, expand, purchase, or sell the system; or

Has discretion over the finances of the system.

**"Coliform sample"** means a sample of water collected from the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.

**"Comprehensive system evaluation (CSE)"** means a review, inspection and assessment of a public water system, including, but not limited to: Source; facilities; equipment; operation and administration; maintenance; records; planning documents and schedules; and monitoring, for the purpose of ensuring that safe and adequate drinking water is provided.

**"Confirmation"** means to demonstrate the results of a sample to be precise by analyzing a repeat sample. Confirmation occurs when analysis results fall within plus or minus thirty percent of the original sample.)) The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Acute"** means posing an immediate risk to human health.

(2) **"ADD (average day demand)"** means the total volume of water produced from all sources of supply over a calendar year divided by three hundred sixty-five.

(3) **"APWA"** means American Public Works Association.

(4) **"ASTM"** means American Society for Testing and Materials.

(5) **"AWWA"** means American Water Works Association.

(6) **"Board"** means the Washington state board of health.

(7) **"Certified lab"** means an analytical laboratory meeting requirements under chapters 246-390 and 173-50 WAC for one or more drinking water analytical parameters.

(8) **"Coliform bacteria"** means a group of rod-shaped bacteria found in the gastrointestinal tract of vertebrate ani-

mals. The presence of coliform bacteria in water is an indicator of possible fecal contamination.

(9) **"Contaminant"** means a substance present in drinking water which may adversely affect the health of the consumer or the aesthetic qualities of the water.

(10) **"Critical water supply service area"** means a geographical area characterized by a proliferation of small, inadequate water systems, or by water supply problems that threaten the present or future water quality or reliability of service in a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(11) **"Cross-connection"** means ((a physical arrangement connecting a public water system, directly or indirectly, with anything other than another potable water system, and capable of contaminating the public water system)) any actual or potential physical connection between a public water system or a consumer's water system and any source of nonpotable liquid, solid, or gas that could contaminate the potable water supply by backflow.

(12) **"Cross-connection control plan"** means a document that identifies the procedures the purveyor uses to protect the Group B system from contamination from cross-connections.

(13) **"Department"** means the Washington state department of health ((or health officer as identified in a joint plan of operation in accordance with WAC 246-291-030(1))).

(14) **"Disinfection"** means the use of chlorine or other agent or process the department approves for killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

(15) **"Distribution system"** means ((that portion)) all piping components of a ((public water supply)) Group B system ((which stores, transmits, pumps, and distributes water to consumers)) that serve to convey water from transmission mains linked to source, storage, and treatment facilities to the consumer excluding individual services.

(16) **"Drilled well"** means a well where the well hole is excavated by mechanical means such as rotary, cable tool, or auger drilling equipment.

(17) **"Dwelling unit"** means a structure, or unit within a structure, with independent living facilities for one or more persons that includes permanent provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit includes, but is not limited to:

(a) A single-family residence; or

(b) Each unit of an apartment building or multifamily building.

(18) **"Ecology"** means the Washington state department of ecology.

(19) **"Equalizing storage"** means the volume of storage needed to supplement supply to consumers when the peak hourly demand exceeds the total source pumping capacity.

(20) **"Expanding ((public water)) Group B system"** means a ((public water)) Group B system installing additions, extensions, changes, or alterations to ((their)) its existing source, transmission, storage, or distribution facilities ((which)) that will enable the system to increase ((it)) the size of its existing service area ((and/or)) or ((its)) the number of approved service connections.

(21) **"Fire flow"** means the maximum rate and duration of water flow needed to ~~((fight))~~ suppress a fire~~((s))~~ under WAC 246-293-640 or ~~((adopted city, town, or county))~~ as required under local fire protection authority standards.

(22) **"Fire suppression storage"** means the volume of stored water available during fire suppression activities maintaining a pressure of at least 20 psi (140 kPa) at all points throughout the distribution system, and under the condition where the designed volume of fire suppression and equalizing storage has been depleted.

(23) **"Generator disconnect switch"** means an electrical ~~((circuit arranged to allow connection of a generator to the power supply for the pumping equipment while prohibiting))~~ device that physically prevents electrical current from flowing back into the main service line.

~~((**"Ground water under the direct influence of surface water (GWI)"** means any water beneath the surface of the ground, which the department determines has the following characteristics:~~

~~Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* *Cryptosporidium*; or~~

~~Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions:~~

~~**"Group B water system"** means a public water system: Constructed to serve less than fifteen residential services regardless of the number of people; or~~

~~Constructed to serve an average nonresidential population of less than twenty-five per day for sixty or more days within a calendar year; or~~

~~Any number of people for less than sixty days within a calendar year.)~~ (24) **"gpm"** means gallons per minute.

(25) **"Group A public water system"** is defined and referenced under WAC 246-290-020.

(26) **"Group B public water system" or "Group B system"** means a public water system that is not a Group A public water system, and is defined and referenced under WAC 246-291-005.

(27) **"Guideline"** means a department document assisting ~~((the owner))~~ a purveyor in meeting a rule or statutory requirement.

(28) **"GWI (groundwater under the direct influence of surface water)"** means any water beneath the surface of the ground, that the department determines has the following characteristics:

(a) Presence of insects or other macroorganisms, algae, or larger-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water conditions such as turbidity, temperature, conductivity, or pH closely correlating to weather or surface water conditions, where natural conditions cannot prevent the introduction of surface water pathogens into the source at the systems' point of withdrawal.

(29) **"Health officer"** means the health officer of the ~~((city, county, city-county))~~ local health ~~((department or district))~~ jurisdiction, or an authorized representative.

(30) **"Human consumption"** means the use of water for drinking, bathing, showering, handwashing, cooking, food preparation, dishwashing, ice-making, or oral hygiene.

(31) **"Hydraulic analysis"** means the study of the ~~((water system network evaluating water flows within the distribution system under worst case conditions such as, peak hourly design flow plus fire flow, when required. Hydraulic analysis includes consideration of all factors affecting system energy losses))~~ Group B system's distribution main and storage network to determine the system's present or future adequacy for providing service to consumers within the established design parameters for the system under peak flow conditions, including fire flow. The analysis establishes the adequacy of design for distribution system components such as piping, elevated storage, booster stations or similar facilities used to pump and convey water to consumers.

(32) **"Infiltration gallery"** means a water collection system built of perforated pipe or conduit and placed in permeable earth, for collecting shallow groundwater. An infiltration gallery is usually located close to springs, wetlands, streams, or ponds.

(33) **"Intertie"** means an interconnection between public water systems permitting the exchange or delivery of water between those systems.

(34) **"JPR (joint plan of responsibility)"** means a written agreement between the department and local health jurisdiction that:

(a) Lists the roles and responsibilities of the department and health officer for reviewing and approving Group B system designs;

(b) Provides for a level of supervision necessary to effectively achieve the responsibilities in the JPR;

(c) Is signed by an authorized representative from the department and local health jurisdiction; and

(d) Is reviewed at least once every five years and updated as needed.

(35) **"kPa"** means kilo pascal (Standard International units of pressure).

(36) **"Local board of health"** means the governing body of a county health department under chapter 70.05 RCW, or a health district under chapter 70.46 RCW.

(37) **"Local health jurisdiction"** means a county health department under chapter 70.05 RCW, city-county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

(38) **"Local permitting authority"** means the local building official, health officer, or authorized representative that makes determinations regarding building permits and development proposals.

(39) **"MCL (maximum contaminant level ((MCL)))"** means the maximum permissible level of a contaminant in water ~~((delivered))~~ the purveyor delivers to any ~~((public water))~~ Group B system ~~((user))~~ consumer, measured at the source before entry to the distribution system.

~~((**"Maximum contaminant level violation"** means a confirmed measurement above the MCL and for a duration of time, where applicable.~~

**"Owner"** means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other

entity that holds as property, a public water system.)) (40) **"MDD (maximum day demand)"** means the highest actual or estimated quantity of water that is, or is expected to be, used over a twenty-four hour period, excluding unusual events or emergencies.

(41) **"mg/L"** means milligrams per liter (1mg/L = 1 part per million).

(42) **"ml"** means milliliter.

(43) **"mm"** means millimeter.

(44) **"Nonresidential service connection"** means a connection to a public water system that provides potable water including, but not limited to a:

(a) Commercial property;

(b) Industrial property;

(c) Civic property;

(d) Municipal property;

(e) Institutional property;

(f) School;

(g) Recreational use as defined in this section; or

(h) Any other authorized use that provides potable water to a nonresidential population.

(45) **"PAS"** means pitless adaptor standard.

(46) **"PHD (peak hourly ((design flow)) demand)"** means the maximum rate of water use, excluding fire flow((which)) that can ((be expected to ever)) occur within a defined service area over a continuous sixty minute time period. PHD is typically expressed in gallons per minute (gpm).

(47) **"Potable"** means water ((suitable)) safe for ((drinking by the public)) human consumption.

((**"Pressure zone"** means a distribution system whereby an established minimum and maximum pressure range can be maintained without the use of ancillary control equipment (e.g., booster pumps, pressure reducing valves, etc.)) (48) **"Potential GWI"** means a source identified by the department or local health jurisdiction as possibly under the direct influence of surface water including, but not limited to a:

(a) Well that has a screened interval fifty feet or less from the ground surface at the wellhead and is located within two hundred feet of a freshwater surface water body;

(b) Ranney well;

(c) Infiltration gallery; or

(d) Spring.

(49) **"Primary ((standards)) MCL"** means a standard((s)) based on chronic, nonacute, or acute human health effects.

(50) **"psi"** means pounds per square inch.

(51) **"Public water system"** means any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer service connections all of which serve residences on the same farm((, providing piped water for human consumption, including)). The term includes:

(a) Collection, treatment, storage, or distribution facilities under the control of a purveyor and used primarily in connection with ((such)) the system((-

**"Repeat sample"** means a sample collected to confirm the results of a previous analysis.)) and

(b) Collection, or pretreatment storage facilities not under the control of a purveyor, and primarily used in connection with the system.

(52) **"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system, or applying to create a public water system. Purveyor also means the authorized agents of these entities.

(53) **"Ranney well"** means a water well or collection system including a central chamber with horizontal perforated pipes extending out into an aquifer. The perforated pipes may extend out under a surface water body such as a lake or river.

(54) **"Recreational service connection"** means a connection to a public water system that provides potable water to each:

(a) Campsite; or

(b) Recreational vehicle site.

(55) **"Residential service connection"** means a connection to a public water system that provides potable water to a dwelling unit.

(56) **"Same farm"** means a parcel of land or series of parcels ((which are)) connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes ((and does not qualify as a Group A water system)).

(57) **"Sanitary survey"** means a review, inspection, and assessment of a public water system by the department or local health jurisdiction.

(58) **"SCA (sanitary control area)"** is defined under WAC 246-291-125(5).

(59) **"SMA (satellite system management agency)"** means a person or entity approved by the department in accordance with chapter 246-295 WAC to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between the systems.

(60) **"Secondary ((standards)) MCL"** means a standard((s)) based on factors other than health effects ((such as taste and odor)).

((**"Sell"** means to bill separately for drinking water or to include drinking water as part of an itemized listing in a bill delivered to customers, where the amount billed is an increase over what the purveyor pays for water. The presence of centralized source or individual service meters does not affect whether the water is being sold.))

(61) **"Service connection"** means a ((connection to a public water system designed to provide potable water)) residential, nonresidential, or recreational service connection as defined in this section.

((**"Special purpose sample"** means a sample collected for reasons other than the monitoring compliance specified in this chapter.

**"Standard methods"** means the 18th edition of the book, titled *Standard Methods for the Examination of Water and Waste Water*, jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered

from AWWA, 6666 West Quinney Avenue, Denver, Colorado 80235.

~~"State board of health" and "board" means the board created by RCW 43.20.030.)~~ (62) "Single family residence" means a structure in which one or more persons maintain a common household. A structure is not a single family residence if it is used for an activity requiring a permit or license under one or more of the following rules:

(a) Food service, chapter 246-215 WAC;

(b) Food inspection, chapter 16-165 WAC;

(c) Residential treatment facility, chapter 246-337 WAC;

(d) Transient accommodations, chapter 246-360 WAC;

(e) Boarding homes licensing rules, chapter 388-78A WAC;

(f) Minimum licensing requirements for child care centers, chapter 170-295 WAC;

(g) School-age child care center minimum licensing requirements, chapter 170-151 WAC; or

(h) Adult family home minimum licensing requirements, chapter 388-76 WAC.

(63) "Spring" means a source of water where the aquifer comes in contact with the land surface.

(64) "Surface water" means a body of water open to the atmosphere and subject to surface runoff, including captured rainfall.

~~("Volatile organic chemical (VOC)" means a manufactured carbon-based chemical that vaporizes quickly at standard pressure and temperature.~~

~~"Water facilities inventory form (WFI)" means the department form summarizing each public water system's characteristics.~~

~~"Well field" means a group of wells one system owns or controls which:~~

~~Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis; and~~

~~Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.)~~ (65) "WSDOT" means Washington state department of transportation.

(66) "Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

(67) "Well site inspection" means a physical inspection of the area near an existing or proposed well location, and completion of a department or health officer-approved form that identifies the suitability of the site for a public water supply well.

AMENDATORY SECTION (Amending WSR 95-20-078, filed 10/4/95, effective 11/4/95)

**WAC 246-291-025 Bottled water and ice-making facilities.** (1) ~~((Any))~~ Water sources used ((for bottling, regardless of size,)) by a facility that produces bottled water or ice for public consumption shall meet the ((minimum)) requirements ((in accordance with)) under chapter 246-290 WAC.

(2) In addition to the requirements ~~((imposed by the department))~~ under chapter 246-290 WAC, the processing of bottled water and ice is regulated by the state department of agriculture under chapter 69.07 RCW, and the United States Food and Drug Administration under 21 C.F.R. 165.110.

AMENDATORY SECTION (Amending WSR 95-20-078, filed 10/4/95, effective 11/4/95)

**WAC 246-291-030 General administration.** (1) The department administers this chapter unless:

(a) A local board of health adopts rules under RCW 70.05.060 or 70.46.060 to implement this chapter that are at least as stringent as this chapter; or

(b) ~~The ((department and the health officer for each local health jurisdiction may develop a joint plan of operation. Responsibility for administering these rules shall remain with the department of health unless there is a joint plan of operation in place. This plan shall:~~

~~(a) List the roles and responsibilities and specifically designate those systems for which the department and local health officer have primary responsibility;~~

~~(b) Provide a list of water system requirements and procedures which the local board of health may waive for systems within its jurisdiction;~~

~~(c) Provide for a level of water system supervision necessary to effectively achieve listed responsibilities;~~

~~(d) Be signed by the department and the local health department or district; and~~

~~(e) Be reviewed at least once every five years and updated as needed.~~

~~Wherever in these rules the term "department" is used, the term "health officer" may be substituted based on the terms of this joint plan of operation.~~

~~(2) The))~~ local health jurisdiction has accepted primary responsibility for administering this chapter in a JPR.

(2) Existing local rules shall remain in effect, except requirements of this chapter that are more stringent than the local board of health rules.

(3) In addition to the requirements of this chapter for Group B systems, local board of health rules may include, but are not limited to:

(a) System operations and maintenance;

(b) Ongoing water quality and water use monitoring;

(c) Reporting of water quality and water use monitoring data to the local health jurisdiction;

(d) System inspections or sanitary surveys;

(e) Public notification;

(f) Additional requirements for existing systems to be considered in compliance; and

(g) Regulation of systems with one or two service connections.

(4) ~~A~~ local board of health may adopt rules ((pursuant to RCW 70.05.060 governing public water systems for which the health officer has assumed primary responsibility. Adopted local board of health rules shall be:

(a) ~~No less stringent and may be more stringent than this chapter; and~~

(b) ~~Revised, if necessary, within twelve months after the effective date of revised state board of health rules. During~~

this time period, existing local rules shall remain in effect, except provisions of the revised state board of health rules which are more stringent than the local board of health rules shall apply.

(3) For residential systems with only two services, the department may eliminate any or all requirements of these rules:

(4) For any residential system, the department may eliminate all ongoing requirements of these rules, except for recordkeeping and reporting requirements under WAC 246-291-260, provided the system has been granted an initial approval or an existing system has been categorized as fully approved/adequate or provisionally approved.

(5) The health officer may approve design reports and water system plans which reflect good engineering practice such as those found in the department guideline titled *Group B Water System Approval*, for those public water systems where the health officer has assumed primary responsibility.

(6) The health officer may allow system owners to substitute results of a calculated fixed radius method and a ten year time of travel criteria instead of using the six hundred foot radius prescribed in WAC 246-291-100 (2)(f) and 246-291-110 (3)(f).

(7) The department may develop and distribute guidelines to clarify sections of the rules as needed.

(8) Fees may be charged by the department of health as authorized in RCW 43.20B.020 and by local health agencies as authorized in RCW 70.05.060 to recover all or a portion of the costs incurred in administering these rules)) that require a purveyor of a Group B system to obtain an annual operating permit as authorized under RCW 70.119A.130.

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-050 Enforcement.** (1) When a Group B system is out of compliance with ~~((these rules))~~ this chapter, the department may initiate ~~((appropriate))~~ enforcement actions ~~((, regardless of any prior approvals issued by the department, including, but not limited to:~~

- ~~(a) Issuance of a compliance schedule;~~
- ~~(b) Issuance of departmental orders requiring submission of water system plans, design reports, and construction report forms;~~
- ~~(c) Issuance of departmental orders requiring specific actions or ceasing unacceptable activities within a designated time period;~~
- ~~(d) Issuance of departmental orders to stop work and/or refrain from using any public water system or improvements thereto until all written approvals required by statute or rule are obtained;~~
- ~~(e) Imposition of civil penalties as authorized under chapter 70.119A RCW or local authority where applicable; and~~
- ~~(f) Legal action by the attorney general or local prosecutor.~~

(2) When enforcing the MCLs under this chapter, the department shall enforce compliance with the primary MCLs as its first priority)) under RCW 70.119A.030 and 70.119A.040.

(2) A health officer may initiate enforcement actions as authorized under RCW 70.46.060 and 70.119A.050, and as authorized under local board of health rules.

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-060 Waivers.** (1) ~~((The state board of health or the local health officer in those counties having a joint plan of operation, may grant waivers of the requirements of this chapter, provided that procedures used are consistent with WAC 246-290-060 (5)(b) and in the case where a local health officer is authorized to grant the waiver, procedures used shall be approved by the department of health as part of the joint plan of operation.~~

~~((2) Consideration by the board or local health officer of requests for waivers shall))~~ A health officer or local board of health may grant a waiver from the requirements of this chapter, provided that:

(a) The local health jurisdiction has:

(i) Adopted rules under RCW 70.05.060 or 70.46.060 that are at least as stringent as this chapter; or

(ii) Accepted primary responsibility for administering this chapter in a JPR;

(b) The health officer conditions the approval of a waiver to include, at a minimum:

(i) Water quality treatment;

(ii) Monitoring; or

(iii) Maintenance and oversight; and

(c) The health officer obtains sufficient evidence from a purveyor that a proposed Group B system will deliver drinking water that does not exceed a primary MCL under WAC 246-291-170, and will provide an adequate supply of water under WAC 246-291-125(3).

(2) The health officer shall not grant a waiver from the residential population requirement for each dwelling unit under WAC 246-291-200(2).

(3) A request for a waiver is not ((be)) considered an adjudicative proceeding((s)) as ((that term is)) defined ((in)) under chapter 34.05 RCW.

~~((3) Statements and written material regarding the request may be presented to the board or local health officer wherein the application will be considered.))~~

~~((4) ((The board or local health officer may grant a waiver if it determines the water system is unable to comply with the requirements and granting of the waiver will not result in an unreasonable risk to the health of consumers. No waivers may be granted for exceedance of a primary MCL.~~

~~((5))~~ A waiver granted under this section shall ((lapse two)) expire five years from the date of issuance ((unless the water system project has been completed or an extension is granted)) if construction of the Group B system is not completed.

NEW SECTION

**WAC 246-291-090 Public Water System Coordination Act and satellite management.** (1) A purveyor of a new or expanding Group B system shall comply with the applicable coordinated water system plan created under chapter 246-

293 WAC and 70.116 RCW if located within the boundaries of a critical water supply service area.

(2) The department or health officer shall approve a new or expanding Group B system consistent with requirements under WAC 246-293-190 and RCW 70.116.060(3).

(3) A new Group B system must comply with SMA requirements under RCW 70.119A.060.

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-120 Design report approval.** (1) ~~((Design reports shall be submitted to the department for))~~ A purveyor shall receive written department or health officer approval of a design report prior to ((installation of any));

(a) Installing a new ((water)) Group B system(, or water system extension or improvement with the following exceptions:

(a) Installation of valves, fittings, and meters); or

(b) ((Repair of a system component or replacement with a similar component of the same capacity; and

(c) Maintenance or painting of surfaces not contacting potable water-)) Providing service to more than the current approved number of service connections.

(2) ((Design reports submitted for approval by owners of systems required to have a water system plan, will not be considered for approval unless there is a current approved water system plan and the plan adequately addresses the project.

(3) Design reports shall include, at a minimum, the following:)) To obtain design report approval for a Group B system, a purveyor shall provide a copy of the following, at a minimum, to the department or health officer:

(a) ((Alternatives. Verify contacts with other water system owners as applicable in accordance with WAC 246-291-140(2);)) Documentation that creating a new system or expanding an existing system does not conflict with any applicable coordinated water system plan adopted under chapter 246-293 WAC;

(b) ((Legal considerations. Identify legal aspects such as ownership, right of way, sanitary control area, and restrictive covenants;)) Documentation that creating a new system complies with the SMA requirements under RCW 70.119A.-060(2);

(c) ((Engineering calculations. Describe how the project complies with the design considerations;)) Source approval under WAC 246-291-125 or 246-291-135;

(d) ((Drawings. Include detailed drawings of each project component;)) Documentation that all requirements under WAC 246-291-140 are met;

(e) A system design that complies with the requirements under WAC 246-291-200 including, but not limited to:

(i) Drawings of each project component, including:

(A) Location;

(B) Orientation;

(C) Size; and

(D) Easements for;

(I) Future access and maintenance of distribution system pipelines located on private property, or franchise agreements necessary for distribution system pipelines located within public right of way; and

(II) Other system components, including access and maintenance of reservoirs, wells, and pumping stations.

(ii) Material specifications(~~(-List detailed material specifications))~~ for each project component;

(~~((f))~~) (iii) Construction specifications(~~(-List detailed construction specifications))~~ and assembly techniques (~~(for carrying out the project)~~);

(~~((g))~~) (iv) Testing(~~(-Identify testing))~~ criteria and procedures (~~(for each applicable portion of the project)~~); and

(~~((h))~~) (v) A description of disinfection(~~(-Identify specific disinfection))~~ procedures (~~(which must conform with American Water Works Association standards or other standards acceptable by the department)~~;

(i) Inspection. Identify provisions for inspection of the installation of each project component. See WAC 246-291-040 for construction reporting requirements; and

(j) Change orders. All changes except for minor field revisions must be submitted to and approved by the department in writing.

(4) Approval of design reports shall be in effect for two years unless the department determines a need to withdraw the approval. An extension of the approval may be obtained by submitting a status report and a written schedule for completion. Extensions may be subject to additional terms and conditions imposed by the department)) as required under WAC 246-291-220.

(3) The design report shall be prepared, sealed, and signed in accordance with chapter 196-23 WAC by a professional engineer who:

(a) Is licensed in the state of Washington under chapter 18.43 RCW; and

(b) Has specific expertise regarding design, operation, and maintenance of public water systems.

(4) A local health jurisdiction that has accepted primary responsibility in a JPR under WAC 246-291-030 may adopt by rule, an exception to the professional engineer requirement for Group B systems that:

(a) Do not use a variable speed pump;

(b) Do not provide fire flow;

(c) Do not have special hydraulic considerations;

(d) Do not have atmospheric storage in which the bottom elevation of the storage reservoir is below the ground surface; and

(e) Serve fewer than ten service connections.

(5) A purveyor shall submit a "Construction Completion Report for Public Water System Projects" to the department or health officer on a form approved by the department or health officer within sixty days of construction completion, and before use of any approved Group B system. The form must:

(a) Be signed by a professional engineer, unless the health officer approves the project as meeting the requirements under subsection (4) of this section;

(b) Include a statement that the project is constructed and completed according to the design report requirements under this chapter; and

(c) Include a statement that the installation, testing, and disinfection of the Group B system is completed in accordance with this chapter.

(6) All design changes, except for minor field revisions, must be submitted in writing to, and approved by, the department or health officer.

**NEW SECTION**

**WAC 246-291-125 Groundwater source approval.**

(1) Groundwater sources submitted to the department or health officer for design approval under WAC 246-291-120 must comply with the following requirements:

- (a) Drinking water shall be obtained from the highest quality source feasible.
- (b) All permanent groundwater sources must:
  - (i) Be designed to be physically connected to the distribution system;
  - (ii) Be a drilled well constructed in accordance with chapter 173-160 WAC; and
  - (iii) Meet water quality requirements under WAC 246-291-170.
- (c) The department or health officer shall not approve a design for a new or expanding Group B system using a GWI source.
- (d) The department or health officer shall not approve a design for a new or expanding Group B system using a potential GWI source until a hydrogeologic evaluation is completed by a licensed hydrogeologist or engineer that determines the source is not GWI. The GWI evaluation and determination must be completed before the department or health officer will review the Group B design report.

(2) Before pursuing groundwater source approval under this section, a purveyor shall contact the department or local health jurisdiction to identify any additional requirements.

(3) A purveyor shall provide a copy of the following to the department or health officer to obtain groundwater source approval:

- (a) The water right permit, if required, for the source, quantity, type, and place of use;
- (b) The water well report, as required under WAC 173-160-141;
- (c) The well site inspection report form completed by the department or local health jurisdiction, or designee;
- (d) A map showing:
  - (i) The project location;
  - (ii) A six hundred foot radius around the well site designating the preliminary short-term groundwater contribution area; and
  - (iii) The perimeter of a one hundred foot SCA, meeting the requirements in subsection (4) of this section.
- (e) A map showing topography, distances to the well from existing property lines, buildings, potential sources of contamination within the six hundred foot radius around the well, and any other natural or man-made features that could affect the quality or quantity of water;
- (f) The recorded legal documents for the SCA;
- (g) Results from an initial analysis of raw source water quality from a certified lab, including, at a minimum:
  - (i) Coliform bacteria;
  - (ii) Inorganic chemical and physical parameters under WAC 246-291-170, Tables 2, 3, and 4; and

(ii) Other contaminants, as directed by the department or health officer in areas where it determines that other contamination may be present.

(h) Pump test data establishing groundwater source capacity including, but not limited to:

- (i) Static water level;
- (ii) Sustainable yield;
- (iii) Drawdown;
- (iv) Recovery rate; and
- (v) Duration of pumping.

(i) Additional pump testing in locations where water resource limitations or known seasonal groundwater fluctuations may affect future reliability as directed by the department or health officer.

(4) Groundwater source capacity.

(a) A groundwater source for a Group B system with residential connections must be pump tested to determine if the well(s) and aquifer are capable of reliably supplying water that meets the minimum requirements under Table 1 of this section.

(b) A groundwater source must be pump tested to determine if the well(s) and aquifer are capable of supplying water at the rate required to provide the water volume as determined under WAC 246-291-200 for a source supplying a Group B system with:

- (i) Nonresidential service connections; or
- (ii) Both residential and nonresidential service connections.

(c) Where a locally adopted watershed plan or ecology watershed rule under Title 173 WAC establishes a higher water supply requirement, the purveyor shall use the higher value to assess the adequacy of the source of supply.

(d) A purveyor shall design the Group B system to meet the requirements under Table 1, even if a locally adopted watershed plan or watershed rule under Title 173 WAC limits water use below the values in Table 1.

**Table 1  
Minimum Source Capacity and Water Supply for Residential Service Connections**

County	Gallons per day per dwelling unit
Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skamania, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom	750
Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima	1,250

(5) SCA.

(a) A purveyor shall establish the SCA around each groundwater source to protect it from contamination.

(b) The SCA must have a minimum radius of one hundred feet, unless technical justification submitted by a licensed hydrogeologist or engineer to the department or health officer supports a smaller area. The justification must address geological and hydrogeological data, well construc-

tion details, and other relevant factors necessary to provide adequate sanitary control.

(c) The department or health officer may require a larger SCA if geological and hydrological data support such a decision.

(d) A purveyor shall own the SCA, or the purveyor shall have the right to exercise complete sanitary control of the land through other legal provisions.

(e) A purveyor shall record a restrictive covenant to the title of each property that is sited partially or completely within the SCA to protect the SCA in perpetuity.

#### NEW SECTION

**WAC 246-291-135 Interties.** (1) A purveyor submitting a new or expanding Group B system design for approval using a nonemergency intertie source shall provide the following to the department or health officer:

(a) A copy of the intertie agreement under subsection (2) of this section;

(b) Evidence that the supplying water system currently operates in compliance with chapter 246-290 or 246-291 WAC;

(c) Location of the proposed intertie;

(d) Information on any water quality issues and treatment being used;

(e) Demonstration of the source capacity and hydraulic capacity of the supply and receiving systems at the designed flow rate through the intertie;

(f) A copy of the water right or water right change issued by ecology, if required under RCW 90.03.383;

(g) Identification of alternative sources that will be used when the intertie agreement expires if the water is not being provided in perpetuity; and

(h) Verification that a source meter has been installed to measure water received.

(2) An intertie agreement between purveyors must identify:

(a) Specific time periods in which water will be provided;

(b) The volume of water available for use, including any seasonal or other restrictions; and

(c) How operations will be coordinated.

AMENDATORY SECTION (Amending WSR 95-20-078, filed 10/4/95, effective 11/4/95)

**WAC 246-291-140 Water system planning and disclosure requirements.** ((1) Water system plan.

(a) The water system plan shall:

(i) Identify present and future needs;

(ii) Set forth means for meeting those needs; and

(iii) Do so in a manner consistent with other relevant plans and local, state, and federal laws.

(b) Owners of the following categories of systems shall ensure the development and submittal of a water system plan for review and approval by the department:

(i) All systems as required by chapter 70.116 RCW the Public Water System Coordination Act of 1977 and chapter 246-293 WAC;

(ii) Any system experiencing problems related to planning, operation, and/or management as determined by the department and outlined in a departmental order;

(iii) Any proposed or expanding system as determined by the department; and

(iv) Any system which installs treatment, other than simple chlorination disinfection equipment, after the effective date of these regulations.

(c) A department guideline titled *Group B Water System Approval* is available from the department to assist owners in developing this plan. Design reports may be combined with a water system plan. To the extent to which they are applicable, the water system plan shall address the following elements:

(i) Description of system management and ownership;

(ii) Description of appropriate water quality monitoring and reporting requirements;

(iii) Service area and identification of existing and proposed major facilities;

(iv) Maximum number of connections the system can safely and reliably support;

(v) Water conservation program. Systems which are developed or expanded after the effective date of this rule shall develop a conservation program;

(vi) Relationship and compatibility with other plans;

(vii) Description of water source(s) including compliance with applicable source approval and protection under WAC 246-291-100 and 246-291-110;

(viii) Source protection (including required protective covenants, wellhead protection and watershed control where applicable); and

(ix) Financial viability.

(2) Prior to developing a new water system, the developer of the proposed system shall follow the steps listed below as applicable:

(a) The developer shall ensure that the new system is owned or operated by a department-approved satellite management agency (SMA), or if a department-approved SMA is not available, that the proposed new system has a department-approved water system plan in accordance with WAC 246-291-140;

(b) Department approval of any system created after July 22, 1995, that is not owned or operated by a SMA shall be conditioned upon future management or ownership by a SMA, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements.

(c) If the proposed system is located within the boundaries of a critical water supply service area, the ability to develop an independent system shall be governed by the provisions of the Public Water System Coordination Act, chapter 70.116 RCW and chapter 246-293 WAC, and will be subject to the jurisdictional coordinated water system plan; or

(d) If the proposed system consists of a surface water or GWI source, ensure that the proposed system will be owned and operated by a department-approved satellite system management agency.

(3) For systems approved after the effective date of these rules, a summary of the following shall be recorded, by the system owner, on all affected property titles as a means of providing information about the system to property owners, lending institutions, and other potentially affected parties:

(a) Notice that the property is served by a public water system;

(b) The initial water system plan, planning section of the *Group B Water System Guideline*, or equivalent information from other documents as determined by the department;

(c) Notice that the system is subject to state and local rules;

(d) Recommendation to check with the jurisdictional regulatory authority on the current system status;

(e) Notice that fees may be assessed by the department for providing information on a public water system;

(f) Requirement for satellite management, if applicable;

(g) Notice of any waivers granted to the system; and

(h) Other information required by the department.) (1)

A purveyor submitting a new or expanding Group B system design for approval shall provide the following information to the department or health officer:

(a) The system's management and ownership;

(b) The system's service area and existing and proposed major facilities;

(c) The maximum number of service connections the system can safely and reliably supply;

(d) The relationship and compatibility with other locally adopted plans;

(e) The amount of revenue needed to operate and maintain the system, and a plan to meet revenue needs;

(f) A cross-connection control plan if any existing cross-connections are identified;

(g) Security measures under the strict control of the purveyor to be provided to protect the water source, water storage reservoir, and the distribution system;

(h) For systems that will use sources with a well pump test indicating a yield of 5.0 gpm or less, a contingency plan describing short-term and long-term measures to restore water to consumers in the event the well(s) cannot provide an adequate supply of water;

(i) The public notification procedures that the purveyor will use as required under WAC 246-291-360.

(2) A purveyor shall record the following information on each customer's property title before providing water from the Group B system to any service connection:

(a) System name and a department issued public water system identification number;

(b) System owner name and contact information;

(c) The following statement: "This property is served by a Group B public water system that has a design approval under chapter 246-291 Washington Administrative Code";

(d) Parcel numbers to be served by the system;

(e) Indicate if the system is designed and constructed to provide fire suppression;

(f) A copy of any waiver granted under WAC 246-291-060 to the purveyor;

(g) Indicate:

(i) If service connections are metered or not;

(ii) If the purveyor intends to monitor the system for contaminants;

(iii) How often monitoring will occur; and

(iv) How the consumers of the system will be notified of monitoring results;

(h) Contact information for the approving authority (department or local health jurisdiction);

(i) The type of source treatment provided for any contaminants that exceed secondary MCLs;

(j) Instructions about how to obtain a copy of the agreements for consumers, if one exists; and

(k) Other information, as directed by the department or health officer.

## NEW SECTION

**WAC 246-291-170 Water quality requirements for groundwater source approval.** (1) All water quality samples collected under this section must be:

(a) Collected without chlorine, ultraviolet light, ozone, or other disinfectant in use to treat the source;

(b) Collected after the well has been pumped long enough to allow for collection of a representative sample of the aquifer, as described in the *Group B Water System Design Guidelines (2012)*; and

(c) Analyzed by a certified lab.

(2) To meet the requirements for design approval under WAC 246-291-120, a purveyor shall obtain, at a minimum:

(a) Satisfactory results from two raw source water samples analyzed for coliform bacteria;

(b) Results from one raw source water sample that have been analyzed for, and do not exceed, any primary MCL in Table 2 of this section; and

(c) In areas known or suspected to have contaminants of public health concern, one raw source water sample analyzed for the contaminant(s) as directed by the department or health officer.

(3) When analytical results indicate a presence of coliform bacteria, a purveyor shall do the following:

(a) Disinfect the source using procedures under WAC 246-291-220; and

(b) Collect two repeat samples and analyze for coliform bacteria by a certified lab.

(4) A purveyor shall collect a confirmation raw source water sample and have the sample analyzed for each parameter that exceeded the MCL in the initial sample, if:

(a) An analysis exceeds a primary MCL in Table 2 of this section; or

(b) A contaminant of public health concern under subsection (2)(c) of this section exceeds the primary MCL under WAC 246-290-310.

(5) The department or health officer shall not approve the proposed source if:

(a) The average concentration from all samples for each substance taken under this section exceeds a primary MCL in Table 2 of this section;

(b) The repeat sample results collected under subsection (3) of this section indicate a presence of coliform bacteria; or

(c) A contaminant of public health concern collected under this section exceeds the primary MCL under WAC 246-290-310.

(6) When an analysis exceeds a secondary MCL in Table 3 or 4 of this section, a purveyor shall include treatment in the Group B system design under WAC 246-291-200 so that drinking water delivered to consumers does not exceed a secondary MCL.

**Table 2**  
**Primary Inorganic Chemical Contaminants**

Substance	MCLs (mg/L)
Antimony (Sb)	0.006
Arsenic (As)	0.010*
Barium (Ba)	2.0
Beryllium (Be)	0.004
Cadmium (Cd)	0.005
Chromium (Cr)	0.1
Cyanide (HCN)	0.2
Fluoride (F)	4.0
Mercury (Hg)	0.002
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Selenium (Se)	0.05
Thallium (Tl)	0.002

Note: \*The arsenic MCL in Table 2 applies to new and expanding Group B systems. For Group B systems constructed prior to January 1, 2013, the arsenic MCL is 0.05 mg/L. WAC 246-291-360 (3) and (4) establish public notification requirements for Group B systems constructed prior to January 1, 2013, with an arsenic concentration exceeding 0.010 mg/L.

**Table 3**  
**Secondary Inorganic Chemical Contaminants**

Substance	MCLs (mg/L)
Chloride (Cl)	250.0
Fluoride (F)	2.0
Iron (Fe)	0.3
Manganese (Mn)	0.05
Silver (Ag)	0.1
Sulfate (SO <sub>4</sub> )	250.0
Zinc (Zn)	5.0

**Table 4**  
**Secondary Physical Characteristics**

Substance	MCLs
Color	15 color units
Specific conductivity	700 umhos/cm
Total dissolved solids (TDS)	500 mg/L

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-200 Design standards.** (1) ~~((Water system owners))~~ A purveyor submitting a new or expanding Group B system design for approval shall ((ensure that)) use good engineering practices ((are used in the design of all public water systems. Information on what is good engineering practice is available from)) and apply industry standards in the design, such as those in:

(a) The department ((in the)) guideline titled *Group B Water System ((Approval)) Design Guidelines* (2012);

(b) *Water Systems Council PAS-97(04) Pitless Adapters and Watertight Well Caps* (2004);

(c) Standard specifications of the:

(i) American Public Works Association;

(ii) American Society of Civil Engineers;

(iii) American Water Works Association; and

(iv) American Society for Testing and Materials.

(d) Minimum standards for construction and maintenance of wells, chapter 173-160 WAC;

(e) *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers* (2007);

(f) *Standard Specifications for Road, Bridge and Municipal Construction* (WSDOT/APWA 2012);

(g) *USC Manual of Cross-Connection Control*, 10th edition (October 2009);

(h) *PNWS-AWWA Cross-Connection Control Manual*, sixth edition (1996);

(i) International Building Code (IBC) (2012); and

(j) Uniform Plumbing Code (UPC) (2012).

(2) ~~((In addition, owners of new or expanding public water systems shall ensure the following factors are addressed:~~

~~(a) Local conditions, plans and/or regulations;~~

~~(b) Public Water System Coordination Act considerations where appropriate; and~~

~~(c) Other requirements as determined by the department.~~

~~(3) Any pipe, pipe fittings, solder, or flux used in the installation or repair of a public water system shall be lead-free. Within the context of this section, lead-free shall mean having no more than eight percent lead in pipes and pipe fittings, and no more than two-tenths of one percent lead in solder and flux. This prohibition shall not apply to leaded joints necessary for the repair of cast iron pipes.))~~ A purveyor submitting a new or expanding Group B system design for approval shall:

(a) Calculate residential population by using 2.5 persons per dwelling unit;

(b) Use full-time occupancy for each dwelling unit; and

(c) Use planning, engineering and design criteria under WAC 246-290-100 through 246-290-250 if the system is being designed to serve ten to fourteen residential service connections.

(3) A purveyor shall demonstrate that the source(s) of supply, pipes and other constructed conveyances are capable of meeting the minimum residential water supply as required under WAC 246-291-125(3) Table 1.

(4) A new or expanding Group B system must be designed with the capacity to deliver the PHD at 30 psi (210 kPa) measured along property lines adjacent to distribution mains, under the following conditions:

(a) When all equalizing storage has been depleted, if the system is designed to supply PHD in part with equalizing storage; and

(b) At the "pump-on" pressure setting for the pump directly supplying the distribution system, when the water system is designed to supply PHD without any equalizing storage.

(5) If the design PHD exceeds the total source pumping capacity, then sufficient equalizing storage must be provided.

(6) The minimum design flow and duration required for fire flow and fire suppression storage, if provided, shall be determined by:

(a) The local fire protection authority; or

(b) As required under chapter 246-293 WAC for Group B systems within the boundaries of a designated critical water supply service area.

(7) In the design of a new or expanding Group B system that does not have to comply with minimum fire flow standards, a purveyor shall coordinate with the local fire protection authority to assess if any hydrants create adverse pressure problems as a result of expected fire suppression activities, and address any pressure problems in the design.

(8) If fire flow is provided, the distribution system must be designed to provide the MDD for the entire Group B system and the required fire flow at a pressure of at least 20 psi (140 kPa) at all points throughout the distribution system when the designed volume of fire suppression and equalizing storage has been depleted.

(9) The Group B system design must contain a water meter that measures the water use of the entire water system (totalizing source meter) and a source sample tap.

(10) The use of individual service booster pumps to meet the requirements of this section is prohibited.

(11) A purveyor shall equip a new or expanding Group B system with a generator disconnect switch.

(12) A purveyor shall use generally accepted industry standards and practices in the elimination or control of all cross-connections, such as:

(a) USC *Manual of Cross-Connection Control*, Tenth Edition, October 2009; and

(b) PNWS-AWWA *Cross-Connection Control Manual*, Sixth Edition (1996).

(13) A pitless unit, pitless adaptor, and vented sanitary well cap must conform with the product, material, installation, and testing standards under the *Water Systems Council PAS-97(04) Pitless Adapters and Watertight Well Caps* (2004).

#### NEW SECTION

**WAC 246-291-205 Drinking water materials and additives.** (1) In the design of a new or expanding Group B system, all materials shall conform to the ANSI/NSF Standard 61 if in substantial contact with potable water supplies.

(2) Substantial contact means the degree that a component is in contact with drinking water.

(a) Examples of water system components considered to be in substantial contact with drinking water include, but are not limited to:

(i) Storage reservoir interiors, liners, or covers;

(ii) Treatment, transmission, and distribution piping; or

(iii) Other water system components that have high potential for contact with drinking water, such as filter media, absorption media, ion exchange resins, and pressure vessels.

(b) Materials such as valves, pipe fittings, debris screens, gaskets, or similar appurtenances are not considered to be in substantial contact.

(3) Any chemicals specified for use in the design of treatment for secondary MCLs in Table 3 under WAC 246-291-170, with the exception of commercial grade hypochlorite compounds such as unscented Clorox or Purex, shall comply with ANSI/NSF Standard 60. The design dosage shall not exceed the maximum application dosage recommended for the product as certified by the ANSI/NSF Standard 60.

(4) Pipes, pipe fittings, fittings, fixtures, solder, or flux used in the design of a new or expanding Group B system shall be lead-free. For the purposes of this section, lead-free means:

(a) No more than twenty-five one-hundredths of one percent lead in pipes and pipe fittings;

(b) No more than two-tenths of one percent lead in solder and flux; and

(c) Fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e).

**AMENDATORY SECTION** (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-210 Distribution systems.** (1) ~~((All distribution reservoirs shall have suitable watertight roofs or covers preventing))~~ Storage reservoirs shall be designed to:

~~(a) Prevent entry by birds, animals, insects, ((and)) excessive dust ((and shall include appropriate provisions to safeguard against trespass, vandalism, and sabotage. All new distribution reservoirs shall be able to be drained by gravity to daylight)), and other potential sources of external contamination;~~

~~(b) Include:~~

~~(i) A weathertight roof;~~

~~(ii) A lockable access hatch;~~

~~(iii) A screened roof vent;~~

~~(iv) An overflow pipe with atmospheric discharge or other suitable means to prevent a cross-connection;~~

~~(v) A sample tap;~~

~~(vi) A drain to daylight, or an alternative design approved by the department or health officer that is adequate to protect against cross-connection;~~

~~(vii) Tank isolation in order to perform maintenance procedures; and~~

~~(viii) Other appurtenances appropriate for the protection of stored water from contamination;~~

~~(c) Be above normal ground surface level. If the bottom elevation of a storage reservoir must be below normal ground surface;~~

(i) The storage reservoir must be placed above the groundwater table; and

(ii) The top of a partially buried storage reservoir must be at least two feet above normal ground surface.

~~(2) ((The owner shall ensure that the distribution system is sized and evaluated using a hydraulic analysis acceptable to the department.~~

~~(3)) A Group B system(s) designed to ((provide)) supply fire hydrants ((shall)) must have a minimum distribution main size of six inches (150 mm) supplying each hydrant.~~

~~((4) New water systems or additions to existing systems shall provide a design quantity of water at a positive pressure of at least thirty psi throughout the system under peak hourly design flow conditions measured at any customer's water meter or at the property line if no meter exists.~~

~~(5) If fire flow is to be provided, the distribution system shall be designed to provide the required fire flow at a pressure of at least twenty psi throughout the system during peak hourly design flow conditions.~~

~~(6) Booster pumps needed for individual services shall be subject to review and approval by the department. Installation shall be made under the supervision of the owner to ensure cross-connection control requirements are met. Installation of booster pumps which are an integral part of the system design shall be inspected and certified by the engineer.))~~

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-220 Group B system disinfection ((of facilities)).** ~~((No portion of a public water system containing potable water shall be put into service, nor, if service has been terminated, shall service resume, until the facility has been effectively disinfected. The procedure used for disinfection shall conform to the American Water Works Association standards or other standards acceptable to the department. In cases of new construction, drinking water shall not be furnished to the consumer until satisfactory bacteriological samples have been analyzed by a laboratory certified by the state.)) (1) A purveyor shall disinfect a Group B system before providing service to any consumer.~~

(2) The water system disinfection procedures must conform to the following standards:

(a) AWWA C651-05 or APWA/WSDOT (2010 revision), for water main disinfection;

(b) AWWA C652-02, for reservoir disinfection; and

(c) AWWA C654-03, for well disinfection.

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-250 Continuity of service.** ~~((1) Notification shall include a time schedule for transferring responsibilities, identification of the new owner, and under what authority the new ownership will operate. If the system is a corporation, identification of the registered agent shall also be provided.~~

~~(2) The system transferring ownership shall ensure all health-related standards are met during transfer and shall~~

~~inform and train the new owner regarding operation of the system.~~

~~(3) No owner shall end utility operations without providing written notice to all customers and the department at least one year prior to termination of service.~~

~~(4) Nothing in these rules shall prohibit an owner from terminating service to a specific customer if the customer fails to pay normal fees for service in a timely manner or if the customer allows or installs an unauthorized service connection to the system.~~

~~(5) Where this section may be in conflict with existing state statutes, the more stringent statute shall prevail.)) (1) A purveyor of a Group B system shall notify all the system's consumers in writing before transferring ownership. The notification must include a time schedule for transferring responsibilities, identification of the new owner, and under what type of authority the new ownership will operate.~~

(2) At least one year prior to terminating system operation, a purveyor of a Group B system shall notify all consumers in writing and provide a copy of the written notice to the department and health officer.

#### NEW SECTION

**WAC 246-291-280 Existing Group B systems.** (1) A purveyor of a Group B system shall apply for and obtain design approval under WAC 246-291-120, or approval under subsection (3) of this section before the system:

(a) Expands to serve a new service connection needing potable water; or

(b) Provides potable water for a new use of an existing service connection if a local permitting authority requires an approved public water supply as a condition of an approval of the new use.

(2) A local permitting authority may determine a Group B system constructed before January 1, 2013, without design approval under this chapter, to be adequate for existing connections if, at a minimum, the following requirements are met:

(a) The system's source(s) must meet well construction standards, under chapter 173-160 WAC;

(b) A well site inspection completed by the department, local health jurisdiction, or designee has documented that there are no sources of contamination in the SCA that could create a public health risk;

(c) The system meets water quality standards under WAC 246-291-170, Table 2; and

(d) The system is capable of maintaining a minimum 20 psi at all points throughout the distribution system during peak demand.

(3) A purveyor of a Group B system approved prior to January 1, 2013, may provide potable water to additional service connections provided that:

(a) The expanded use is consistent with the existing design approval;

(b) The expanded use does not exceed the number of approved service connections; and

(c) The purveyor complies with all locally adopted requirements.

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-300 General ((~~monitoring~~)) requirements.** (1) A purveyor of a Group B system shall provide potable water to the system's consumers.

(2) The department or health officer may require ((additional monitoring when it determines contamination is present or suspected in the water system or when it determines the source may be vulnerable to contamination.

(2) Special purpose samples shall not count toward fulfillment of the monitoring requirements of this chapter.

(3) The owner shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to department approved methods. The analyses shall be performed by the state public health laboratory or another laboratory certified by the department. Qualified water utility, certified laboratory, or department personnel may conduct measurements for pH, temperature, residual disinfectant concentration and turbidity as required by this chapter, provided, these measurements are made in accordance with *Standard Methods*.

(4) When one Group B water system sells water to another public water system and the cumulative number of services or population served meet the definition of a Group A system, the owner of the selling system shall ensure that source monitoring is conducted in accordance with the minimum requirements for Group A community systems found in chapter 246-290 WAC.) a purveyor to collect water quality samples, have the samples analyzed by a certified lab, and report results as required under WAC 246-291-360, when the department or health officer:

(a) Determines a public health risk exists;

(b) Receives information documenting contamination;

(c) Receives a report of suspected or known waterborne illness from a health care provider as required under chapter 246-101 WAC; or

(d) Is aware of, or observes, a situation in which the source may be vulnerable to contamination. For example, a source is vulnerable to contamination from a flood event.

AMENDATORY SECTION (Amending WSR 94-14-002, filed 6/22/94, effective 7/23/94)

**WAC 246-291-360 Public notification.** ~~((1) Responsibility. Within fourteen days of the violation, the owner shall ensure that water system users are notified when the system has a violation of a primary MCL.~~

~~(2) Content. Notices shall provide:~~

~~(a) A clear, concise, and simple explanation of the violation;~~

~~(b) Discussion of potential adverse health effects and any segments of the population that may be at higher risk;~~

~~(c) A list of steps the owner has taken or is planning to take to remedy the situation;~~

~~(d) A list of steps the consumer should take, including advice on seeking an alternative water supply if necessary;~~

~~(e) The owner's and manager's names and phone numbers; and~~

~~(f) When appropriate, notices shall be multilingual.~~

The owner may provide additional information to further explain the situation:

~~(3) Distribution. Owners shall ensure that a written notice is distributed to all water system users within fourteen days of a violation unless otherwise directed by the department.~~

~~(4) When circumstances dictate the owner give a broader or more immediate notice to protect public health, the department may require notification by whatever means necessary.~~

~~(5) When a system is granted a waiver for reduction of water quality standards, the owner shall ensure that customers are notified. The owner shall provide a notice annually and send a copy to the department.) (1) A purveyor of a Group B system shall notify the department, health officer, and all system consumers in writing within twenty-four hours when the purveyor:~~

~~(a) Obtains a water quality sample analysis from a certified lab indicating the presence of *E. coli*;~~

~~(b) Obtains a water quality sample analysis from a certified lab indicating the presence of nitrate at a concentration at or above 10.0 mg/L; or~~

~~(c) Is aware of circumstances that pose a threat of acute contamination, such as a flood event.~~

~~(2) A purveyor of a Group B system required to monitor water quality under WAC 246-291-300 that is not required to notify consumers within twenty-four hours under subsection (1) of this section shall notify the department, health officer, and all system consumers, in writing, within thirty days of receiving the results from a certified lab if directed by the department or health officer.~~

~~(3) If a Group B system constructed prior to January 1, 2013, has an arsenic concentration exceeding 0.010 mg/L, the purveyor shall notify consumers in writing:~~

~~(a) By March 31, 2013, if the sample analysis result from a certified lab was obtained prior to January 1, 2013;~~

~~(b) Within thirty days of receiving a sample analysis result from a certified lab; or~~

~~(c) Within thirty days of adding a new service connection under WAC 246-291-280(3).~~

~~(4) The public notification must include the following information:~~

~~(a) A description of contamination and any known problem(s);~~

~~(b) What the purveyor is doing to resolve the problem(s);~~

~~(c) Where to get information about potential health effects;~~

~~(d) What the consumers should do to protect their health, including the use of another source of water;~~

~~(e) When the purveyor expects the problem(s) to be resolved; and~~

~~(f) Group B system contact information, including address, phone number, and if available, an e-mail address.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-291-020      Applicability.

WAC 246-291-040      Requirements for engineers.

WAC 246-291-100	Ground water source approval and protection.
WAC 246-291-110	Surface water and GWI source approval and protection.
WAC 246-291-130	Existing system approval.
WAC 246-291-230	Treatment design and operations.
WAC 246-291-240	Reliability.
WAC 246-291-260	Recordkeeping and reporting.
WAC 246-291-270	Cross-connection control.
WAC 246-291-310	General follow-up.
WAC 246-291-320	Bacteriological.
WAC 246-291-330	Inorganic chemical and physical.
WAC 246-291-340	Turbidity.
WAC 246-291-350	Other substances.

**WSR 12-17-141****PROPOSED RULES****PUGET SOUND****CLEAN AIR AGENCY**

[Filed August 21, 2012, 5:20 p.m.]

## Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 3.11 (Civil Penalties) and Section 3.25 (Federal Regulation Reference Date).

Hearing Location(s): Tacoma Municipal Building, 728 St. Helens Avenue, Room 16, Tacoma, WA 98402, on September 27, 2012, at 8:45 a.m.

Date of Intended Adoption: September 27, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 26, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adjust the maximum civil penalty amount for inflation and update the federal regulation reference date.

Reasons Supporting Proposal: Without the adjustment for inflation, the maximum civil penalty amount would effectively decrease each year. The federal regulation reference date needs to be kept current.

Statutory Authority for Adoption: Chapter 70.94 RCW.  
Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 21, 2012

Craig Kenworthy

Executive Director

**AMENDATORY SECTION****REGULATION I, SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$17,057.00)~~) \$17,279.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than (~~(\$17,057.00)~~) \$17,279.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

### **AMENDATORY SECTION**

#### **REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2011~~) 2012.

**WSR 12-17-142**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
[Filed August 21, 2012, 5:21 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.03 (Applicability of Registration Program).

Hearing Location(s): Tacoma Municipal Building, 728 St. Helens Avenue, Room 16, Tacoma, WA 98402, on September 27, 2012, at 8:45 a.m.

Date of Intended Adoption: September 27, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 26, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Exclude bulk gasoline plants from the specific NESHAP criteria in our registration program.

Reasons Supporting Proposal: The proposal will reduce administrative costs that do not result in environmental gain. The registration program will remain focused on the areas of highest environmental importance. Also, the agency will be able to fulfill its obligations associated with EPA delegation of rule implementation. This is a cost savings to the potentially affected sources and this agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 21, 2012

Craig Kenworthy  
Executive Director

### **AMENDATORY SECTION**

#### **REGULATION I, SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM**

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart BBBBBB pertaining to bulk gasoline plants, and Subparts WWWW, CCCCC, HHHHH, WWWW, XXXXX, YYYYY, and ZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>2.5</sub> or PM<sub>10</sub>), sulfur oxides (SO<sub>x</sub>), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinylester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Crushing operations subject to Section 9.18; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥4" diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

(I) Dry sorbent injection;

(J) Flaring;

(K) Non-selective catalytic reduction;

(L) Refrigerated condenser;

(M) Selective catalytic reduction; or

(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥10" diameter inlet):

(A) Baghouse;

(B) Demister;

(C) Electrostatic precipitator;

(D) HEPA (high efficiency particulate air) filter;

(E) HVAF (high velocity air filter);

(F) Mat or panel filter;

(G) Mist eliminator;

(H) Multiple cyclones;

(I) Rotoclone;

(J) Screen;

(K) Venturi scrubber;

(L) Water curtain; or

(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥27" diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;

(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills;

(O) Wood preserving lines or retorts; or

(P) Dry cleaners using perchloroethylene; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air

contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 12-17-143**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
[Filed August 21, 2012, 5:21 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.03 (Notice of Construction).

Hearing Location(s): Tacoma Municipal Building, 728 St. Helens Avenue, Room 16, Tacoma, WA 98402, on September 27, 2012, at 8:45 a.m.

Date of Intended Adoption: September 27, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 26, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Maintain exemption for small boilers and heaters, which have less than ten MMBtu/hr heat input, from the Notice of Construction program.

Reasons Supporting Proposal: The proposal will reduce administrative costs that do not result in environmental gain. The Notice of Construction program will remain focused on the areas of highest environmental importance. Also, the agency will be able to fulfill its obligations associated with EPA delegation of rule implementation. This is a cost savings to the potentially affected sources and this agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 21, 2012  
Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 6.03 NOTICE OF CONSTRUCTION**

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), Subpart OOO (Nonmetallic Mineral Processing Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart

Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills) pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart DDDDD (Industrial, Commercial, and Institutional Boilers and Process Heaters), Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispensing Facilities), Subpart HHH-HHH (Paint Stripping and Miscellaneous Surface Coating Operations), Subpart WWWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferroalloys Production Facilities), and Subpart ZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the new sources identified in this section, provided that a complete notification is filed with the Agency. It shall be unlawful for any person to cause or allow establishment of a new source identified in this section unless a complete notification has been filed with the Agency:

#### **Liquid Storage and Transfer**

(1) Storage tanks used exclusively for:

(A) Gasoline dispensing and having a rated capacity of  $\geq 1,001$  gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity  $\geq 40,000$  gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

#### **Relocation of Portable Batch Plants**

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

#### **Dry Cleaning**

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

#### **Printing**

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with  $\leq 6\%$  VOC by volume or  $\leq 8.5\%$  if refrigerated to  $< 60^\circ\text{F}$ , and cleaning solvents with a vapor pressure  $\leq 25\text{mm Hg}$  or a VOC content  $\leq 30\%$  by volume.

#### **Water Treatment**

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

#### **Sanding Equipment**

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of  $< 3.5:1$  (for reverse-air or manual cleaning) or  $< 12:1$  (for pulse-jet cleaning).

#### **Ventilation and Control Equipment**

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of  $< 3.5:1$  (for mechanical or manual cleaning) or  $< 12:1$  (for pulse-jet cleaning).

(9) Replacement of an existing paint spray booth that has previously received an Order of Approval, with like kind equipment and for spray coating operations that continue to operate consistent with the previously issued Order of Approval. *All the conditions in the previously issued Order of Approval remain in effect.*

#### **Miscellaneous**

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

#### **Coffee Roasters**

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

#### **Combustion**

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A)  $< 10$  million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane, biodiesel that meets ASTM D 6751 specifications (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89 and land-based nonroad compression engines subject to 40 CFR Part 1039.

#### **Metallurgy**

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity  $\leq 1,000$  pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity  $\leq 450$  cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity  $\leq 1,000$  pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A)  $\leq 50$  grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or  $\leq 12\%$  hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of  $\leq 20\%$  by weight and using  $\leq 10,000$  amp-hours per day, or phosphoric acid anodizing with a bath concentration of  $\leq 15\%$  by weight of phosphoric acid and using  $\leq 20,000$  amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

#### **Ceramics and Glass**

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity  $\leq 1,000$  pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

#### **Plastics and Rubber and Composites**

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is  $\leq 1\%$  by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter  $\leq 26$  inches, PROVIDED THAT it is operated at  $\leq 400^\circ\text{F}$ .

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

#### **Material Working and Handling**

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of  $< 2,000$  cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

#### **Abrasive Blasting**

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with  $\geq 66\%$  by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is  $\leq 100$  cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

#### **Cleaning**

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity  $\leq 10$  gallons and containing  $\leq 5\%$  by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure  $\leq 0.6$  psi containing  $\leq 5\%$  by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing  $\leq 5\%$  by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity  $\leq 2$  gallons; or

(E) Using solutions with a Volatile Organic Compound (VOC) content of  $\leq 1\%$  by weight and no identified Hazardous Air Pollutant (HAP), and are heated below the boiling point of the solution.

(54) Hand-wipe cleaning.

#### **Coating, Resin, and Adhesive Application**

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity  $\leq 8$  fluid ounces, PROVIDED THAT it is not used to coat  $> 9$  square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity  $\leq 2$  fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of  $\leq 1$  quart of coating and hand-held brush and rollers for coating application.

(60) Spray-coating equipment used exclusively for application of automotive undercoating or bed liner materials with a flash point  $> 100^\circ\text{F}$ .

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing  $< 1\%$  VOC by weight and  $< 0.1\%$  HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

**Printing**

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or <10% VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

**Photography**

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

**Liquid Storage and Transfer**

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, hot mix asphalt plants, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity  $\leq 1,000$  gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity <20,000 gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity <40,000 gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity  $\geq 40,000$  gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength  $\leq 99\%$  by weight;

(H) Nitric acid with an acid strength  $\leq 70\%$  by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength  $\leq 30\%$  by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains  $\leq 1\%$  VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content  $\leq 5\%$  by volume or a VOC composite partial pressure of  $\leq 0.1$  psi at 68°F; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring >1,000 gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

**Mixing**

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(88) Batch mixers with a rated working capacity  $\leq 55$  gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts  $\geq 90\%$  of the rim.

**Water Treatment**

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

**Landfills and Composting**

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

**Agriculture, Food, and Drugs**

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

**Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants**

(112) Portable nonmetallic mineral processing plants.

(113) Fixed nonmetallic mineral processing plants.

(114) (Reserved).

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

**Construction**

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

**Ventilation and Control Equipment**

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

**Testing and Research**

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

**Miscellaneous**

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

**WSR 12-17-144**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
 [Filed August 21, 2012, 5:22 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 8.05 (Agricultural Burning Permits).

Hearing Location(s): Tacoma Municipal Building, 728 St. Helens Avenue, Room 16, Tacoma, WA 98402, on September 27, 2012, at 8:45 a.m.

Date of Intended Adoption: September 27, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 26, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the agency's fees for agricultural burning permits to reflect 2012 statewide fee increases made by ecology and the agricultural burning practices and research task force. Our proposed amendments are also deleting the specific language regarding the fee distribution with ecology. It is duplicative of the ecology rule and not relevant to our permitting work with applicants.

Reasons Supporting Proposal: The benefit of these amendments is solely to ensure our agricultural burning permit fees are consistent with those being adopted by ecology, which we must implement. The costs associated with these permit fee increases have been addressed by ecology previously in their small business and cost-benefit analysis documents for their last amendments to chapter 173-430 WAC.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 21, 2012  
 Craig Kenworthy  
 Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 8.05 AGRICULTURAL BURNING PERMITS**

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in chapter 173-430 WAC also apply to this section; provided that if there is a conflict between this section and chapter 173-430 WAC, this section governs.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

(1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and

(2) Burning is necessary for crop propagation or rotation, disease or pest control; and

(3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in RCW 70.94.6528 as referenced in chapter 173-430 WAC); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards; and

(4) The proposed burning will not cause a violation of any Agency regulation.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning.

(1) The permit application shall be submitted on forms provided by the Agency and shall include:

(A) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);

(B) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and

(C) A permit fee as required below:

Burn Type	Minimal Fee	Variable Fee
(i) Field Burning of vegetative residue on an area of land used in an agricultural operation. <i>(does not include pile burning)</i>	<del>((( \$30 )))</del> \$37.50 for the first 10 acres. <del>((( \$15 each for the Agency and Ecology administration )))</del>	<del>((( \$3 )))</del> \$3.75 for each additional acre. <del>((( \$1.25 each per acre for the Agency and Ecology administration, and \$.50 per acre for the research fund )))</del>
(ii) Spot Burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists.	<del>((( \$30 )))</del> \$37.50 for 10 acres or less. <del>((( \$15 each for the Agency and Ecology administration )))</del>	None.

Burn Type	Minimal Fee	Variable Fee
(iii) Pile Burning of stacked vegetative resi-due from an agricultural operation.	\$80 for the first <del>((400))</del> 80 tons. <del>(((\$16 each for the Agency administration and the research fund, and \$48 for Ecology administration.)))</del>	<del>(((\$50))</del> \$1.00 for each additional ton. <del>(((\$10 each per ton for the Agency administration and the research fund, and \$30 per ton for Ecology administration.)))</del>

(2) Any refunds of the variable fee portion of a permit fee are issued in accordance with chapter 173-430 WAC.

**(d) Permit Action and Content.**

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

(e) **Permit Denial.** All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

**WSR 12-17-145  
PROPOSED RULES  
PUGET SOUND  
CLEAN AIR AGENCY**  
[Filed August 21, 2012, 5:23 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Summary of changes to Regulation I, Article 13 (Solid Fuel Burning Device Standards):

- Amend Regulation I, Section 13.01 (Policy and Purpose);
- Repeal Regulation I, Sections 13.02 (General Conditions for Solid Fuel Burning Devices) and 13.03 (Contingency Plan);
- Adopt Regulation I, Sections 13.02 (Definitions), 13.03 (Opacity Standards), 13.04 (Allowed and Prohibited Fuel Types), 13.05 (Restrictions on Operation of Solid Fuel Burning Devices), 13.06 (Emission Performance Standards), and 13.07 (Prohibitions on Wood Stoves that are not Certified Wood Stoves).

Hearing Location(s): Tacoma Municipal Building, 728 St. Helens Avenue, Room 16, Tacoma, WA 98402, on September 27, 2012, at 8:45 a.m.

Date of Intended Adoption: October 25, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 26, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules amend the Puget Sound Clean Air Agency's existing rules regarding solid fuel burning devices to clarify the definition of "adequate source of heat;" to require the removal of uncertified wood stoves and coal-only heaters from buildings in the Tacoma, Pierce County nonattainment area by September 30, 2015; to clarify allowable fuels; and to add a prohibition on installing unapproved devices, including older, polluting, uncertified wood stoves.

Reasons Supporting Proposal: The proposal intends to reduce fine particle air pollution in the Tacoma, Pierce County nonattainment area. This would support reaching and maintaining compliance with the health-based federal standard for fine particle pollution in the nonattainment area, as well as benefit the health of the residents in the nonattainment area.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Carole Cenci, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4091; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 21, 2012  
Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 13.01 POLICY AND PURPOSE**

The Board of Directors of the Puget Sound Clean Air Agency (Board) declares it to be the public policy of the Agency to control and reduce air pollution caused by ~~((woodstove emissions))~~ solid fuel burning devices such as wood stoves, pellet stoves, and fireplaces. It is the Agency's policy to ~~((reduce woodstove emissions by encouraging the continued efforts to))~~ educate the public about the health effects of ~~((woodstove))~~ wood stove emissions ~~((,-other))~~ and cleaner heating alternatives(-and). It is the ~~((desirability))~~ intent of ~~((achieving better emission performance and heating effi-~~

~~iciency from woodstoves pursuant to the emissions performance standards as adopted by the Department of Ecology)) this regulation to secure and maintain levels of air quality that protect human health and to comply with the requirements of the state and federal Clean Air Acts. ((It is further the policy of the Board to encourage the replacement of uncertified woodstoves with cleaner sources of heat.))~~

The Board encourages cities, towns and counties within its jurisdiction to ~~((adopt woodsmoke control programs including))~~ enhance ~~((and abatement ordinances))~~ ((d)) public education ~~((and abatement ordinances))~~ and assist in the enforcement of this Regulation during declared air quality episodes and periods of impaired air quality. ~~((Nothing in this Regulation shall be construed to impair the right of any city, town or county to adopt and enforce woodsmoke abatement ordinances.))~~

## **REPEALER**

**REGULATION I, SECTION 13.02 GENERAL CONDITIONS FOR SOLID FUEL BURNING DEVICES**

## **NEW SECTION**

**REGULATION I, SECTION 13.02 DEFINITIONS**

When used herein:

(a) ADEQUATE SOURCE OF HEAT means a heating system designed to maintain seventy degrees Fahrenheit at a point three feet above the floor in each normally inhabited room. If any part of the heating system has been disconnected, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of the design on the system's capability prior to the disconnection, damage, improper maintenance ~~((failure to maintain))~~, malfunction, or occurrence that rendered the system nonfunctional.

(b) AGENCY means the Puget Sound Clean Air Agency.

(c) CERTIFIED WOOD STOVE means a wood stove that:

(1) has been determined by Ecology to meet Washington emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100; or

(2) has been certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(3) meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and is certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(d) COAL-ONLY HEATER means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking and has all of the following characteristics:

(1) An opening for emptying ash which is located near the bottom or the side of the appliance;

(2) A system which admits air primarily up and through the fuel bed;

(3) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and

(4) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

(e) ECOLOGY means the Washington State Department of Ecology.

(f) EPA means the United States Environmental Protection Agency.

(g) FINE PARTICULATE or PM2.5 means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

(h) FIREPLACE means any permanently installed masonry fireplace or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(i) NONAFFECTED PELLET STOVE means a pellet stove that has an air-to-fuel ratio equal to or greater than 35.0 to 1.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 CFR 60 Appendix A, Test Method 28A - Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances" as amended through July 1, 1990.

(j) NONATTAINMENT AREA means a geographical area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(k) PM10 means particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

(l) PROPERLY SEASONED FUEL WOOD means untreated wood or untreated lumber with moisture content of 20% or less, wet basis, or 25% or less, dry basis.

(m) SOLID FUEL BURNING DEVICE or SOLID FUEL HEATING DEVICE means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel which has a heat input less than one million British thermal units per hour. This includes, but is not limited to, devices used for aesthetic or space-heating purposes in a private residence or commercial establishment.

(n) SUBSTANTIALLY REMODELED means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.

(o) TACOMA, WASHINGTON FINE PARTICULATE NONATTAINMENT AREA means the area of Pierce County that is designated by EPA as not meeting the 2006 federal 24-hr fine particulate National Ambient Air Quality Standard and described in 40 CFR 81.348. This area is also known as the Tacoma, Pierce County Nonattainment Area.

(p) TREATED WOOD means wood or lumber of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.

(q) WOOD STOVE or WOOD HEATER means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

(1) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

(2) A useable firebox volume of less than twenty cubic feet;

(3) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

(4) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

### **REPEALER**

#### **REGULATION I, SECTION 13.03 CONTINGENCY PLAN**

### **NEW SECTION**

#### **REGULATION I, SECTION 13.03 OPACITY STANDARDS**

(a) A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

(b) Test method and procedures. Methods and procedures specified by the EPA in "40 CFR 60 Appendix A reference method 9 - Visual Determinations of the Opacity of Emissions from Stationary Sources" as amended through July 1, 1990, shall be used to determine compliance with subsection (a) of this section.

(c) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of a solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device. The provisions of this section shall not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

### **NEW SECTION**

#### **REGULATION I, SECTION 13.04 ALLOWED AND PROHIBITED FUEL TYPES**

(a) A person shall cause or allow only the following materials to be burned in a solid fuel burning device:

- (1) Properly seasoned fuel wood; or
- (2) An amount of paper necessary for starting a fire; or
- (3) Wood pellets; or
- (4) Biomass fire logs intended for burning in a wood stove or fireplace; or
- (5) Coal with sulfur content less than 1.0% by weight burned in a coal-only heater.

(b) All other materials are prohibited from being burned in a solid fuel burning device, including, but not limited to: garbage; pallets; treated lumber; fencing; treated wood; plastic and plastic products; rubber products; animal carcasses; asphaltic products; waste petroleum products; paints and chemicals; paper (other than an amount necessary to start a fire); or any substance that emits dense smoke or obnoxious odors.

### **NEW SECTION**

#### **REGULATION I, SECTION 13.05 RESTRICTIONS ON OPERATION OF SOLID FUEL BURNING DEVICES**

(a) No person in a residence or commercial establishment shall operate a solid fuel burning device under any of the following conditions:

(1) Whenever the Agency has declared the first stage of impaired air quality for a geographical area in accordance with RCW 70.94.473 (1)(b)(i) or (ii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section or the solid fuel burning device is one of the following:

(A) A nonaffected pellet stove; or

(B) A wood stove certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(C) A wood stove meeting the "Oregon Department of Environmental Quality Phase 2" emission standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984; or

(D) A solid fuel burning device approved by Ecology as meeting the standards in RCW 70.94.457 (1)(a)-(b).

(2) Whenever the Agency has declared the second stage of impaired air quality for a geographical area in accordance with RCW 70.94.473 (1)(c)(i), (ii), or (iii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section.

(b) Whenever a first stage of impaired air quality is declared under subsection (a)(1):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the first stage of impaired air quality if that device is restricted from operating under subsection (a)(1) of this section during the first stage of impaired air quality;

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a first stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a first stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(c) Whenever a second stage of impaired air quality is declared under subsection (a)(2):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the second stage of impaired air quality if that device is restricted from operating under subsection (a)(2) of this section during the second stage of impaired air quality.

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a second stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a second stage of impaired air quality. This presumption

may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(d) Any person desiring an exemption from the Agency for the purposes of subsections (a)(1) or (2) of this section shall apply to the Agency using procedures specified by the Agency.

(1) The following are eligible for exemption:

(A) A residence or commercial building that has no adequate source of heat other than a solid fuel burning device and the building was neither constructed nor substantially remodeled after July 1, 1992.

(B) A residence or commercial building that has no adequate source of heat other than a solid fuel heating device and the building:

i. was constructed or substantially remodeled after July 1, 1992; and

ii. is outside an urban growth area, as defined in RCW 36.70A; and

iii. is outside an area designated by EPA as a PM2.5 or PM10 particulate nonattainment area.

(2) Exemptions shall be valid for a period determined by the Agency. Exemptions may be renewed using procedures specified by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. Exemptions may be revoked if the Agency determines the residence or commercial building for which the exemption was approved no longer qualifies for an exemption.

#### **NEW SECTION**

##### **REGULATION I, SECTION 13.06 EMISSION PERFORMANCE STANDARDS**

(a) Solid fuel burning devices. A person shall not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install a solid fuel burning device unless it meets both subsections (1) and (2):

(1) It has been certified and labeled in accordance with procedures and criteria specified in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; and

(2) It meets the following particulate air contaminant emission standards and the test methodology of EPA in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by EPA subsequent to such date:

(A) Two and one-half grams per hour for catalytic woodstoves; and

(B) Four and one-half grams per hour for all other solid fuel burning devices.

(3) For purposes of subsection (a)(2) of this section, "equivalent" shall mean the emissions limits specified in subsection (a)(2) multiplied by a statistically reliable conversion factor determined by Ecology that relates the emission test results from the methodology established by the EPA prior to May 15, 1991, to the test results from the methodology subsequently adopted by EPA.

(b) Fireplaces. A person shall not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install a factory-built fireplace unless it meets the 1990 EPA standards for wood stoves or an equivalent standard that may be established by the state building code council by rule.

(c) Subsection (a) of this section shall not apply to fireplaces, including factory-built fireplaces and masonry fireplaces.

#### **NEW SECTION**

##### **REGULATION I, SECTION 13.07 PROHIBITIONS ON WOOD STOVES THAT ARE NOT CERTIFIED WOOD STOVES**

(a) Subsections (a)(1) - (a)(4) of this section shall be effective January 1, 2015 and apply only to PM2.5 nonattainment areas or areas where required by EPA.

(1) Any person who owns or is responsible for a wood stove that is both (a) not a certified wood stove and (b) is located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(2) Any person who owns or is responsible for a coal-only heater located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(3) Subsection (a)(1) of section does not apply to:

(A) A person in a residence or commercial establishment that does not have an adequate source of heat without burning wood; or

(B) A person with a shop or garage that is detached from the main residence or commercial establishment that does not have an adequate source of heat in the detached shop or garage without burning wood.

(4) The owner or person responsible for removing or rendering permanently inoperable a wood stove under subsection (a)(1) of this section or a coal-only heater under subsection (a)(2) of this section must provide documentation of the removal and disposal or rendering permanently inoperable to the Agency using the Agency's procedures within 30 days of the removal or rendering permanently inoperable.

(b) PM10. Subsection (b) of this section is established for the sole purpose of a contingency measure for PM10 nonattainment and maintenance areas. If the EPA makes written findings that: (1) an area has failed to attain or maintain the National Ambient Air Quality Standard for PM10, and (2) in consultation with Ecology and the Agency, finds that the emissions from solid fuel burning devices are a contributing factor to such failure to attain or maintain the standard, the use of wood stoves not meeting the standards set forth in RCW 70.94.457 shall be prohibited within the area determined by the Agency to have contributed to the violation. This provision shall take effect one year after such a determination.

#### **WSR 12-17-146**

##### **PROPOSED RULES**

##### **DEPARTMENT OF FISH AND WILDLIFE**

[Filed August 22, 2012, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-049.

Title of Rule and Other Identifying Information: The subject of this proposed rule making is updating, reorganizing, clarifying, and streamlining multiple rules dealing with dressed fish definitions, bottomfish, personal use shellfish, and commercial shellfish. This rule making involves repealing outdated rules as well. Several rules from chapters 220-16, 220-48, 220-52, and 220-56 WAC are involved in this rule making.

Amending WAC 220-16-330 General definitions—Dressed fish, 220-48-005 Puget Sound bottomfish—General provisions, 220-48-015 Beam trawl and otter trawl—Seasons, 220-48-052 Bottomfish troll—Seasons, 220-48-061 Drag seines—Gear, 220-48-071 Bottomfish pots—Gear and seasons, 220-52-018 Clams—Gear, 220-52-019 Geoduck clams—Gear and unlawful acts, 220-52-01901 Geoduck licenses, 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts, 220-52-043 Commercial crab fishery—Additional gear and license use requirements, 220-52-046 Crab fishery—Seasons and areas, 220-52-060 Crawfish fishery, 220-56-315 Crabs, shrimp, crawfish—Unlawful acts, 220-56-320 Shellfish gear—Unlawful acts, 220-56-330 Crab—Areas and seasons, 220-56-335 Crab—Unlawful acts, and 220-56-365 Razor clams—Unlawful acts; new WAC 220-48-072 Unlawful retention of live bottomfish, 220-52-005 Crab—General unlawful acts, 220-52-01902 Commercial geoduck harvest—Requirements and unlawful acts, 220-52-01903 Commercial geoduck harvest—Time and area restrictions, 220-52-036 Definition—Commercial crab fishing, 220-52-038 Commercial crab licenses, 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements, 220-52-044 Commercial crab fishery—Coastal gear recovery permits, 220-52-045 Commercial crab fishery—Seasons and areas—Coastal, 220-52-047 Commercial crab gear—Possession of another's gear and tag tampering, 220-52-048 Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas, 220-52-049 Commercial crab fishery—Gear limits—Coastal, 220-56-317 Personal use shrimp pot gear requirements, and 220-56-318 Personal use crab pot gear requirements; and repealing WAC 220-16-325 General definitions—Dressed fish length measurement, 220-48-001 Puget Sound bottomfish gear, 220-48-019 Roller trawl—Seasons, 220-48-025 Set net—Pacific cod—Gear, 220-48-026 Set net—Pacific cod—Seasons, 220-48-027 Set net—Pacific cod—Logbooks, 220-48-029 Set net—Dogfish—Seasons, 220-48-032 Set line—Seasons, 220-48-041 Commercial jig—Gear, 220-48-042 Commercial jig—Seasons, 220-48-051 Bottomfish troll—Seasons, and 220-48-062 Drag seines—Seasons.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on October 5, 2012, at 8:30 a.m.

Date of Intended Adoption: On or after November 2, 2012.

Submit Written Comments to: Joanna Eide, Enforcement Program, 600 Capitol Way North, Olympia, WA 98501, e-mail Joanna.Eide@dfw.wa.gov, fax (360) 902-2155, by September 19, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by September 19, 2012, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making is to streamline, reorganize, and update rules in accordance with the WAC overhaul project currently underway. The Washington department of fish and wildlife's (WDFW) administrative code is in need of updating and consolidation. The agency's RCWs were combined and updated after the department of fisheries and the department of wildlife consolidated, but a consolidation, clean up, and streamlining of the administrative codes was never done. These changes are part of a larger effort to reorganize and update the agency's administrative code. Anticipated effects are minimal; this project involves merely rewording, clarifying, and reorganizing rules already in existence. See Title of Rule above for a list of rules amended, new rules proposed, and rules repealed as part of this proposal.

Reasons Supporting Proposal: WDFW needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increases in conservation and availability of resources. The proposal is part of WDFW's WAC overhaul project to streamline, update, and reorganize WDFW's administrative code.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.12.045 and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2403; Implementation: Deputy Chief Mike Cenci, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2938; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule making will not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

August 22, 2012

Joanna M. Eide

Administrative

Regulations Analyst

**AMENDATORY SECTION** (Amending Order 817, filed 5/29/69)

**WAC 220-16-330 General definitions—Dressed fish.**

(1) A dressed fish is defined as one from which the viscera or the viscera and head (~~(has))~~ have been removed, unless otherwise defined by department rule.

(2) The length of any dressed fish is defined as the shortest distance between the posterior end of the gill opening and the fork of the tail.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-16-325            General definitions—  
Dressed fish length measurement.

AMENDATORY SECTION (Amending Order 11-43, filed 3/23/11, effective 4/23/11)

**WAC 220-48-005 Puget Sound bottomfish—General provisions.** (1) It is unlawful to possess ~~((any))~~ English sole less than 12 inches in length taken ~~((by any))~~ with commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(2) It is unlawful to possess any starry flounder less than 14 inches in length taken ~~((by any))~~ with commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(3) It is unlawful to possess lingcod taken with ~~((any))~~ commercial gear ~~((the entire year))~~ year-round in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 24A, 24B, 24C, 24D, 25B, 25C, 25D, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(4) It is unlawful to possess ~~((any))~~ lingcod less than 26 inches in length or greater than 36 inches in length taken ~~((by any))~~ with commercial gear in all state waters east of the Bonilla-Tatoosh line.

(5) It is unlawful to possess lingcod taken ~~((by any))~~ with commercial gear from June 16 through April 30 in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 25A, 25E, and 29.

(6) It is unlawful to possess any species of shellfish taken with lawful bottomfish gear except as provided in WAC 220-52-063 and 220-52-066.

(7) Incidental catch.

(a) It is ~~((lawful))~~ permissible to retain bottomfish taken incidental to any lawful salmon fishery, provided the bottomfish could be lawfully taken under state law and department rule.

(b) It is unlawful to retain salmon or sturgeon taken incidental to any lawful bottomfish fishery in Puget Sound.

(c) It is unlawful to retain any species of shellfish taken incidental to any bottomfish fishery in Puget Sound, except ~~((that it is lawful to retain))~~ octopus and squid.

(d) It is unlawful to retain any whiting taken incidental to any bottomfish fishery in Catch Areas 24B, 24C or 26A except when using pelagic trawl gear when these areas have been opened by the director for a directed whiting fishery.

(8) A vessel trip is ~~((defined as having occurred))~~ completed upon the initiation of transfer of catch from a fishing vessel.

(9) Pacific cod.

(a) It is unlawful to discard ~~((any))~~ Pacific cod taken by ~~((any))~~ commercial fishing gear.

(b) All Pacific cod taken by a commercial gear ~~((shall))~~ must be landed at a licensed commercial dealer.

(10) Sablefish.

(a) It is unlawful to take more than 300 pounds of sablefish per vessel trip or more than 600 pounds of sablefish per two-month cumulative limit from open Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(b) A two-month cumulative limit is the maximum amount of fish that may be taken and retained, possessed or landed per vessel per two-fixed calendar month period. The fixed two-month periods are January-February, March-April, May-June, July-August, September-October and November-December.

(11) Sixgill shark. It is unlawful to retain sixgill shark taken ~~((by))~~ with commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(12) Rockfish. It is unlawful to retain any species of rockfish taken ~~((by))~~ with commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(13) Violation of this section is a gross misdemeanor or class C felony, punishable under RCW 77.15.520 or 77.15.550, depending on the gear used or the time and area fished.

AMENDATORY SECTION (Amending Order 11-43, filed 3/23/11, effective 4/23/11)

**WAC 220-48-015 ~~((Beam trawl and otter trawl—Seasons.))~~ Puget Sound bottomfish—Unlawful gear.** (1) It is unlawful to fish for ~~((and))~~ or possess bottomfish taken with ~~((otter trawl and beam trawl))~~ the following gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas:

(a) Otter trawl;

(b) Beam trawl;

(c) Dogfish set net gear;

(d) Pacific cod set net gear;

(e) Set line gear;

(f) Commercial jig gear; and

(g) Troll line gear.

(2) Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-48-052 ~~((Bottomfish troll—Seasons.))~~ Commercial salmon fishing—Retaining Puget Sound bottomfish incidental catch.** ~~((1))~~ It is unlawful to fish for or possess bottomfish taken for commercial purposes with bottomfish troll gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(2) It is unlawful to fish for or possess salmon while fishing for bottomfish with troll line gear under authority of a bottomfish troll license.

(3) In any waters of Puget Sound it is lawful) It is permissible to retain bottomfish for commercial purposes ~~((bottomfish))~~ taken with commercial salmon gear incidental to a lawful salmon fishery in any waters of Puget Sound, except lingcod during closures provided in WAC 220-48-005.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

**WAC 220-48-061 Puget Sound bottomfish—Drag seine(~~s—Gear~~) requirements and seasons.** (1) It is unlawful to operate drag seine or beach seine gear without possessing a valid food fish drag seine fishery license. A violation of this subsection is a gross misdemeanor or class C felony, depending on the circumstances of the violation, punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

(2) It is (~~lawful~~) unlawful to take, fish for, and possess bottomfish(~~, unless otherwise provided,~~) with drag seine or beach seine gear (~~(as described below), unless the gear meets the following requirements:~~

(a) Seines must (~~(not)~~) be (~~(longer than)~~) 350 feet or less in length(~~(-)~~); and

(b) Net mesh must (~~(not)~~) be (~~(smaller than)~~) 1/2-inch stretch measure or larger.

(~~(2) Licensing: A food fish drag seine fishery license is the license required to operate the gear provided for in this section.~~) (3) Violation of subsection (2) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(4) It is unlawful to take, fish for, or possess bottomfish with drag seine gear for commercial purposes except in the following Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

(a) Areas 28A, 28B, 28C, and 28D - Open January 1 through April 30.

(b) All other areas - Open September 1 through April 30, except that Areas 27A, 27B, 27C, and 29 are closed year-round.

(5) Violation of subsection (4) of this section is either a gross misdemeanor or class C felony, depending on the circumstances of the violation, punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending Order 11-43, filed 3/23/11, effective 4/23/11)

**WAC 220-48-071 Puget Sound—Bottomfish pots(~~—Gear and seasons~~).** (1) It is unlawful to take, fish for, and possess bottomfish for commercial purposes with bottomfish pot gear as described in WAC 220-16-145, except in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

Areas 23C and 29 open only by permit from the director.

(2) (~~(Licensing: A bottomfish pot fishery license is the license required to operate the gear provided for in this section.)~~) Violation of subsection (1) of this section is a gross misdemeanor, punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

(3) It is unlawful to operate bottomfish pot gear without possessing a valid bottomfish pot license. Violation of this subsection is a gross misdemeanor or class C felony, depending on the circumstances of the violation, punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

NEW SECTION

**WAC 220-48-072 Unlawful retention of live bottomfish.** It is unlawful to take and preserve bottomfish alive for any commercial purpose. Violation of this section is a gross misdemeanor punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-48-001	Puget Sound bottomfish gear.
WAC 220-48-019	Roller trawl—Seasons.
WAC 220-48-025	Set net—Pacific cod—Gear.
WAC 220-48-026	Set net—Pacific cod—Seasons.
WAC 220-48-027	Set net—Pacific cod—Logbooks.
WAC 220-48-029	Set net—Dogfish—Seasons.
WAC 220-48-032	Set line—Seasons.
WAC 220-48-041	Commercial jig—Gear.
WAC 220-48-042	Commercial jig—Seasons.
WAC 220-48-051	Troll lines—Bottomfish—Gear.
WAC 220-48-062	Drag seines—Seasons.

NEW SECTION

**WAC 220-52-005 Crab—General unlawful acts.** (1) It is unlawful to take or possess soft-shelled crab for any purpose. Violation of this subsection is punishable under RCW 77.15.160 or 77.15.550, depending on whether the crab was taken for personal use or commercial purposes.

(2) It is unlawful for any person to take or possess any female Dungeness crab for any purpose. All female Dungeness crab caught must be released immediately. Violation of this subsection is punishable under RCW 77.15.380 or 77.15.550, depending on whether the crab was taken for personal use or commercial purposes.

(3) It is unlawful to use bleach or antifreeze bottles or any other container as a float for gear used in recreational or commercial crab harvesting. Violation of this subsection is punishable under RCW 77.15.382 or 77.15.520, depending on whether the crab was taken for personal use or commercial purposes.

NEW SECTION

**WAC 220-52-036 Definition—Commercial crab fishing.** "Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crab for commercial purposes, and includes the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.

NEW SECTION

**WAC 220-52-038 Commercial crab licenses.** (1) It is unlawful to take, fish for, land, or deliver crab for commercial purposes in Washington or coastal waters unless the person has the license required by statute or department rule, or if the person is a properly designated alternative operator to a valid license.

(a) For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130.

(b) For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130.

(c) To use ring nets instead of or in addition to pots, a licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license as provided in RCW 77.65.130.

(d) Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators are provided in and controlled by chapters 77.65 and 77.70 RCW.

(2) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

(3) Violation of this section is a gross misdemeanor or a class C felony under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending Order 09-183, filed 8/31/09, effective 10/1/09)

**WAC 220-52-040 Commercial crab fishery—(~~Lawful and unlawful gear, methods, and other~~) Unlawful acts.** (1) Crab size and sex restrictions. It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) Incidental catch may not be retained. It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) Net fishing boats (~~shall~~) must not have crab on board. It is unlawful for any person to possess any ((quantity of)) crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for com-

mercial purposes or while ((there are)) commercial quantities of food fish or shellfish are on board. Violation of this ((section)) subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), ((violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2))) depending on the quantity of crab taken or possessed.

~~((2))~~ (5) Area must be open to commercial crabbing. ((Except when acting lawfully under the authority of a valid permit as provided in (a) and (c) of this subsection,)) It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crab((s)) for commercial purposes in any area or ((at any)) time ((when the location)) that is not open for commercial crabbing by ((permanent rule or emergency)) rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-52-045.

(6) Violation of ((this section)) subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550((4), violation of commercial fishing area or time)), or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation. ((However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2)).

(a) Following the close of a commercial crab season, an emergency coastal crab gear recovery permit may be granted by the director or his or her designee. These emergency permits will be considered on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful season opening. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within twenty-four hours prior to the close of the commercial crab season.

(b) It is unlawful to fail to follow the provisions of an emergency coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(c) Fifteen days after the close of the primary coastal commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean.

(d) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

~~(3) Crabs must be male and 6-1/4 inches across the back.~~ It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back of the crab's shell immediately in front of the shell's tips. Violation of this section is punishable under RCW 77.15.550 (1)(e).

~~(4) Each person and each Puget Sound license is limited to 100 pots.~~ It is unlawful for any person to take or fish

for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this section is punishable under RCW 77.15.520.

(5) **Additional area gear limits.** It is unlawful for any person to use, maintain, operate, or control crab pots or ring nets in excess of the limits prescribed in each of the following Marine Fish Shellfish Management and Catch Reporting Areas. Violation of this section is punishable under RCW 77.15.520:

(a) 10 pots in Marine Fish Shellfish Management and Catch Reporting Area 25E;

(b) 10 pots in all waters of Marine Fish Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula;

(c) 20 pots in that portion of Marine Fish Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek, and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay; and

(d) 10 pots in that portion of Marine Fish Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the 177 Rayonier Dock.

(6) **Groundline gear is unlawful.** It is unlawful to attach or connect a crab pot or ring net to another crab pot or ring net by a common groundline or any other means that connects crab pots together. Violation of this section is punishable under RCW 77.15.520.

(7) **Crab buoy and pot tagging requirements.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy and pot tag that meet the requirements of this subsection except as provided for in (b) of this subsection. Violation of this section is punishable under RCW 77.15.520.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

(c) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

(d) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with state law.

(e) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot

buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

(f) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where the lost gear or tags were last observed, and the presumed cause of the loss.

(g) Coastal replacement crab buoy tags: Coastal crab license holders with a 300-pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500-pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) **No person can possess or use gear with another person's crab pot tag or crab buoy tag.** It is unlawful for any person to possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except under the following circumstances:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

(c) Violation of this section is punishable under ESHB 1516.

(9) **No person can tamper with pot tags.** It is unlawful for any person to remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots. However, persons operating under a valid coastal gear recovery permit or emergency gear recovery permit, issued by the department and who adheres to the permit's provisions may possess crab pots or buoys bearing the tags of another license holder. Violation of this section is punishable under RCW 77.15.180 (3)(b).

(10) **When it is unlawful to buy or land crab from the ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel that has not

been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and that are properly licensed for commercial crab fishing if no Dungeness crabs are on board. Authorized department personnel will perform inspections not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period:

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a crab pot limit has been assigned to the Dungeness crab coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license.

(13) **Determination of coastal crab pot limits.**

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to

a license with landings that total 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one coastal crab pot limit.

(14) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15)) **(7) When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher, wholesale dealer, or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

- (i) Are properly licensed commercial crab fishing; and
- (ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) **Coastal - Barging of crab pots by undesignated vessels.** It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license ((to be used)) to deploy crab pot gear except ((as prescribed below)) under the following conditions:

(a) ((Such a vessel may not carry on board more than 250 crab pots at any one time.

(b) Such a vessel may)) The vessel deploys ((crab)) pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date((-));

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear ((must be)) is

on board the undesignated vessel (~~(when)~~) while the gear is being deployed.

(10) Violation of ((this section)) subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

~~((16) Coastal crab buoys—Registration and use of buoy brands and colors.~~

~~(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one state license shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph. Violation of this section is punishable under RCW 77.15.520.~~

~~(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department. Violation of this section is punishable under RCW 77.15.520.)~~

#### NEW SECTION

**WAC 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. (1) Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) of this subsection. Violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-52-045 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

**(2) Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. Violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

**(3) Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase

300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery after a signed affidavit is received by the department from the owner of a coastal commercial crab fishery license.

(A) Coastal crab license holders with a 300-pot limit may replace up to 15 lost tags by January 15th, up to a total of 30 lost tags by February 15th, and up to a total of 45 lost tags after March 15th of each season.

(B) Coastal crab license holders with a 500-pot limit may replace up to 25 lost tags by January 15th, up to a total of 50 lost tags by February 15th, and up to a total of 75 lost tags after March 15th of each season.

(C) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) Violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

**(5) Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-56-320.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number

registered by the license holder with the department and be of identical color or color combinations.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending Order 06-200, filed 8/10/06, effective 9/10/06)

**WAC 220-52-043 Commercial crab fishery—(~~Additional gear and license use~~) Shellfish pot requirements.**

(1) **Commercial gear limited to pots and ring nets.** It (~~shall be~~) is unlawful to take or fish for crab(~~s~~) for commercial purposes except with shellfish pots and ring nets.

(2) **Commercial gear escape rings and ports defined.** It (~~shall be~~) is unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless (~~such~~) the gear meets the following requirements:

(a) Pot gear must have (~~not less than two~~) 2 or more escape rings or ports (~~not less than 4-1/4 inches inside diameter~~);

(b) Escape rings or ports (~~described above~~) must be 4-1/4 inches inside diameter or larger; and

(c) Escape rings or ports must be located in the upper half of the trap.

(3) (~~Commercial crab gear buoy tag requirements.~~)

(a) ~~In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.~~

(b) ~~In Puget Sound all crab buoys must have the buoy tag issued to the license owner by the department attached to the outermost end of the buoy line.~~

(c) ~~If more than one buoy is attached to a pot, only one buoy tag is required.~~

(4) ~~**Puget Sound—Description of lawful buoys.** All buoys attached to commercial crab gear in Puget Sound waters must consist of a durable material and remain floating on the water's surface when five pounds of weight is attached. It is unlawful to use bleach or antifreeze bottles or any other container as a float. All buoys fished under a single license must be marked in a uniform manner using one buoy brand number registered by the license holder with the department and be of identical color or color combinations. No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of thirty percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white, as the red and white colors are reserved for personal use crab gear as described in WAC 220-56-320(1)(c).~~

(5) ~~**Commercial crab license requirements.** In addition to, and separate from, all requirements in this chapter that govern the time, area, gear, and method for crab fishing, landing, possession, or delivery of crabs, no commercial crab fishing is allowed except when properly licensed. A person~~

~~may take, fish for, land, or deliver crabs for commercial purposes in Washington or coastal waters only when the person has the license required by statute, or when the person is a properly designated alternative operator to a valid license. For Puget Sound, a person must have a "Dungeness crab—Puget Sound" fishery license provided by RCW 77.65.130. For coastal waters, such person must have a "Dungeness crab—Coastal" fishery license provided by RCW 77.65.130. To use ring nets instead of or in addition to pots, then the licensee must also have the "Crab ring net—Puget Sound" or "Crab ring net—non Puget Sound" license in RCW 77.65.130. Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators is provided by and controlled by chapters 77.65 and 77.70 RCW.~~

(6) ~~**Maximum size for commercial crab pots.** It is unlawful to (commercially fish) use a crab pot greater than (thirteen) 13 cubic feet in volume (used) to fish for or take Dungeness crab from state or offshore waters for commercial purposes.~~

(7) ~~**Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any crab fishing.~~

(4) **Groundline gear is unlawful.** It is unlawful to attach or connect a crab pot or ring net to another crab pot or ring net by a common groundline or any other means that connects crab pots together.

(5) **Penalty.** Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty, or RCW 77.15.522 Unlawful use of shellfish gear for commercial purposes—Penalty, whichever is applicable depending on the circumstances of the violation.

#### NEW SECTION

**WAC 220-52-044 Commercial crab fishery—Coastal gear recovery permits.** (1) **Emergency coastal crab gear recovery permit.** Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) **Coastal crab gear recovery permit.** 15 days after the close of the primary coastal commercial crab season, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

NEW SECTION

**WAC 220-52-045 Commercial crab fishery—Seasons and areas—Coastal.** The open times and areas for coastal commercial crab fishing are as follows:

(1) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is permissible to set baited crab gear beginning at 8:00 a.m. November 28.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions. If the department delays a season due to softshell crab conditions, the following provisions will apply:

(a) After consultation with the Oregon department of fish and wildlife, the director may establish a softshell crab demarcation line, by emergency rule.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to softshell crab for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(c) It is unlawful for fishers to set crab gear in any area where the season opening is delayed, except that gear may be set as allowed by emergency rule. Emergency rules will allow setting 64 hours in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

AMENDATORY SECTION (Amending Order 07-285, filed 11/20/07, effective 12/21/07)

**WAC 220-52-046 Commercial crab fishery—Seasons and areas—Puget Sound.** (~~"Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crabs for commercial purposes, and shall include the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.~~)

The (~~lawful~~) open times and areas for commercial crab fishing in Puget Sound are as follows:

(1) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab fishing beginning 8:00 a.m. October 1st through the following April 15th (~~and, after 8:00 a.m. October 1st,~~) from (~~one-half hour~~) 30 minutes before sunrise to (~~one-half hour~~) 30 minutes after sunset, except as provided (~~by other subsections~~) below.

(2) For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:

(a) Catch Area 26A-E (~~shall~~) includes those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located (~~8~~) 0.8 nautical miles north of Picnic Point.

(b) Catch Area 26A-W (~~shall~~) includes those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and northerly of a line from Apple Cove Point to Point Edwards, and south and west of a line that extends from Possession Point to the shipwreck located (~~8~~) 0.8 nautical miles north of Picnic Point.

(3) The following areas are closed to commercial crab fishing except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in *United States v. Washington*:

(a) Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(4) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point, are closed October 1 through October 31 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the ~~((eastern-most)) eastern-most~~ oil dock are closed October 1 through October 31, and March 1 through April 15, of each year.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock, are closed October 1 through October 15.

(5) The following areas are closed to commercial crab fishing until further notice:

(a) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of

Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island, thence to Chuckanut Rock, thence to the most southerly tip of Clark's Point.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B, which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

~~(((6) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28. However, the department may delay opening of the coastal crab fishery due to softshell crab conditions, in which case the following provisions will apply:~~

~~(a) After consultation with the Oregon Department of Fish and Wildlife, the director may, by emergency rule, establish a softshell crab demarcation line.~~

~~(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area for which the season opening has been delayed due to softshell crab for the first thirty days following the opening of such an area if the vessel was employed in the coastal crab fishery during the previous forty-five days.~~

~~(c) Fishers may not set crab gear in any area where the season opening has been delayed, except that gear may be set as allowed by emergency rule and shall allow setting sixty-four hours in advance of the delayed season opening time.~~

~~(d) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.))~~

#### NEW SECTION

**WAC 220-52-047 Commercial crab gear—Possession of another's gear and tag tampering.** (1) **Possession of gear bearing another's crab pot tag or crab buoy tag.** It is unlawful for any person to possess, use, control, or operate any crab pot bearing a tag identifying the pot as belonging to another person, or any buoy not bearing tags issued by the department to the person possessing them, except:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided the permittee adheres to provisions of the permit.

(2) Violation of subsection (1) of this section is punishable under RCW 77.15.520, 77.15.522, 77.15.750, or 77.70.-500, depending on the circumstances of the violation.

(3) **Pot tag or buoy tag tampering.** It is unlawful for any person to remove, damage, or otherwise tamper with crab buoy or pot tags not issued to that person, except: A person may possess the buoy tags or pot tags of another when the person is operating under a valid coastal gear recovery permit or emergency gear recovery permit issued by the department, and adheres to the permit's provisions.

(4) Violation of subsection (3) of this section is a gross misdemeanor punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.

#### NEW SECTION

**WAC 220-52-048 Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas.** (1) **Puget Sound licensing district commercial shellfish gear limit.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit applies to each license. This subsection does not preclude a person who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(2) **Marine Fish-Shellfish Management and Catch Reporting Areas gear limits.** It is unlawful for any person to use, maintain, operate, or control crab pots or ring nets in

excess of the limits prescribed in each of the following Marine Fish-Shellfish Management and Catch Reporting Areas.

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E;

(b) 10 pots in all water of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula;

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek, and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay; and

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the I77 Roynier Dock.

(3) Violation of subsection (2) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

#### NEW SECTION

**WAC 220-52-049 Commercial crab fishery—Gear limits—Coastal.** (1) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. Violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.530 Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punish-

able under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

**(3) Determination of coastal crab pot limits.**

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria is used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license determines the crab pot limit for that license. A crab pot limit of 300 will be assigned to a license with landings totaling up to 35,999 pounds and a crab pot limit of 500 will be assigned to a license with landings totaling 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

(4) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder must be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department will remain in effect until such time as the appeal process is concluded.

AMENDATORY SECTION (Amending Order 06-08, filed 1/22/06, effective 2/22/06)

**WAC 220-52-018 Commercial clam(~~s~~) fishery—Gear.** It (~~shall be~~) is unlawful to take, dig for, or possess

clams, geoducks, or mussels taken for commercial purposes from any of the tidelands in the state of Washington except with a pick, mattock, fork or shovel operated by hand, except:

(1) Permits for the use of mechanical clam digging devices to take clams other than geoducks may be obtained from the director of (~~fisheries~~) the department of fish and wildlife (DFW), subject to the following conditions:

(a) (~~Any or all types of~~) All mechanical devices used (~~in the taking~~) to take or (~~harvesting of~~) harvest shellfish must be approved by the director of (~~fisheries~~) DFW.

(b) A separate permit (~~shall be~~) is required for each (~~and every~~) device used to take or harvest shellfish, and the permit (~~shall~~) must be attached to the specific unit the permit applies to at all times.

(c) All (~~types of~~) clams (~~to be~~) taken for commercial use must be of legal size and in season during the proposed operations unless otherwise provided in specially authorized permits for the transplanting of seed to growing areas or for research purposes.

(d) The holder of a permit to take shellfish from tidelands by mechanical means (~~shall~~) must limit operations to privately owned or leased land.

(e) (~~The~~) Taking (~~of~~) clams (~~from bottoms~~) that lie in or on the substrate under navigable water below the level of mean lower low water by any mechanical device (~~shall be~~) is prohibited except as authorized by the director of (~~fisheries~~) DFW.

(i) Within the enclosed bays and channels of Puget Sound, Strait of Juan de Fuca, Grays Harbor and Willapa Harbor, the operators of all mechanical devices (~~shall~~) must confine their operations to (~~bottoms leased~~) substrate-leased from the Washington department of natural resources, subject to the approval of the director of (~~fisheries~~) DFW.

(~~The harvesting of~~) (ii) It is unlawful to harvest shellfish (~~from bottoms~~) that lie in or on the substrate of the Pacific Ocean westward from the western shores of the state (~~shall not be carried out~~) in waters less than (~~two~~) 2 fathoms deep at mean lower low water. (~~In said waters more than two fathoms deep~~) The director of (~~fisheries~~) DFW may reserve all or (~~certain areas thereof~~) portions of the substrate in waters more than 2 fathoms deep and prevent the taking of shellfish in any quantity from (~~such~~) those reserves (~~established on the ocean bottoms~~).

(f) Noncompliance with any part of (~~these regulations~~) this section or with special requirements of individual permits (~~will~~) results in immediate cancellation (~~of~~) and/or subsequent nonrenewal of all permits held by the operator.

(g) Applications for permits to use mechanical clam digging devices must be made on the forms provided by (~~the department of fisheries~~) DFW, and permits must be in (~~the possession of~~) the (~~operator~~) operator's possession before digging commences.

(h) All permits to take or harvest shellfish by mechanical means (~~shall~~) expire on December 31 of the year of issue.

(i) All mechanical clam harvesting machines must have approved instrumentation that (~~will~~) provides deck readout of water pressure.

(j) All clam harvest machines operating on intertidal grounds where less than (~~ten~~) 10 percent of the substrate material is above 500 microns in size must be equipped with

a propeller guard suitable for reducing the average propeller wash velocity at the end of the guard to approximately ~~((twenty-five))~~ 25 percent of the average propeller wash velocity at the propeller. The propeller guard must also be positioned to provide an upward deflection to propeller wash.

(k) Clam harvest machines operating in fine substrate material where less than ~~((ten))~~ 10 percent of the substrate material is above 500 microns in size, ~~((shall))~~ must have a maximum harvest head width of 3 feet (overall) and the maximum pump volume as specified by ~~((the department of fisheries))~~ DFW, commensurate with the basic hydraulic relationship of 828 gpm at 30 pounds per square inch, pressure to be measured at the pump discharge.

(l) Clam harvest machines operating in coarser substrate material where more than ~~((ten))~~ 10 percent of the substrate material is above 500 microns in size, ~~((shall))~~ must have a maximum harvest head width of 4 feet (overall) and a maximum pump volume as specified by ~~((the department of fisheries))~~ DFW, commensurate with a basic hydraulic relationship of 1,252 gpm at 45 pounds per square inch, pressure to be measured at the pump discharge.

(m) All clam harvest machine operators must submit accurate performance data showing revolutions per minute, gallons per minute, and output pressure for the water pump on their machine. In addition, they ~~((shall))~~ must furnish the number and sizes of the hydraulic jets on the machines. If needed, the operator ~~((shall))~~ will thereafter modify the machine (install a sealed pressure relief valve) as specified by ~~((the department of fisheries))~~ DFW to conform with values set forth in ~~((either WAC 220-52-018 (11) or (12) of))~~ this section. Thereafter, it ~~((shall be))~~ is illegal to make unauthorized changes to the clam harvester water pump or the hydraulic jets. Exact description of the pump volume, maximum pressure and number and size of the hydraulic jet for each harvester machine ~~((shall))~~ must be included in the ~~((department of fisheries'))~~ DFW's clam harvest permit.

(n) All clam harvest machines ~~((shall))~~ must be equipped with a 3/4-inch pipe thread tap and valve that will allow rapid coupling of a pressure gauge for periodic testing by enforcement ~~((personnel))~~ officers.

(o) Each mechanical clam harvester must have controls ~~((so))~~ arranged and situated near the operator ~~((which will))~~ to allow the operator to immediately cut off the flow of water to the jet manifold without affecting the capability of the vessel to maneuver.

(p) Licensing: A hardshell clam mechanical harvester fishery license is ~~((the license))~~ required to operate the mechanical harvester gear provided for in this section. For more information on or to apply for a hardshell clam mechanical harvester fishery license, visit department offices, call the WDFW license division at 360-902-2500, or visit the department web site at [www.wdfw.wa.gov](http://www.wdfw.wa.gov).

(2) Aquatic farmers may harvest geoducks that are private sector cultured aquatic product by means of water pumps and nozzles.

(3) Persons may harvest nonstate tideland wild geoducks under a nonstate lands commercial wild clam, mussel and oyster trial fishery permit by means of water pumps and nozzles.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

**WAC 220-52-060 Commercial crawfish fishery.** ~~((It is unlawful to fish for or possess crawfish taken for commercial purposes except as provided for in this section:~~

~~((1) General crawfish provisions:~~

~~((a) Crawfish may not be taken for commercial purposes with gear other than shellfish pots and no person may fish more than 400 pots.~~

~~((b) The open season for commercial crawfish fishing is))~~

(1) Licensing: A shellfish pot fishery license is required to operate the gear provided for in this section. An application for a shellfish pot fishery license is available at the offices of the department, by calling the WDFW license division at 360-902-2500, or on the department web site at [www.wdfw.wa.gov](http://www.wdfw.wa.gov).

(2) Commercial crawfish season: The first Monday in May through October 31, except:

In Washington waters of the Columbia River downstream from the mouth of the Walla Walla River, it is permissible to take crawfish ~~((may be taken))~~ from April 1 through October 31.

~~((e) The minimum commercial))~~ (3) Commercial crawfish size and sex restrictions:

(a) Crawfish ~~((size is))~~ must be 3-1/4 inches or more in length from the tip of the rostrum (nose) to the tip of the tail ~~((and))~~.

(b) All undersize crawfish and female crawfish with eggs or young attached to the abdomen must be immediately returned unharmed to the waters from which taken. ~~((Fishermen))~~ Fishers must sort and return illegal crawfish to the waters from which taken immediately after the crawfish are removed from the shellfish pot and prior to lifting additional pots from the water.

~~((d) Fishermen may not discard into any water of the state any crawfish bait.~~

~~((e) Crawfish fishing is not allowed within 1/4 mile of the shoreline of developed parks.~~

~~((f) The provisions of this section do not apply to the commercial culture of crawfish at a registered aquatic farm.~~

~~((2))~~ (4) Commercial crawfish gear, fishing areas, and pot number restrictions:

(a) It is unlawful to take crawfish for commercial purposes with gear other than shellfish pots.

(b) The department determines the maximum number of pots permitted in any given body of water. Once the permitted maximum number of pots for any given body of water is reached, no further permits may be issued for that area. Permits are issued on a first-come, first-served basis consistent with all other regulations concerning issuance of commercial crawfish harvest permits.

(c) It is unlawful for a person to fish more than 400 pots at one time in the commercial crawfish fishery.

(d) It is unlawful to fish for crawfish for commercial purposes in the following waters:

#### Clallam

Anderson Lake  
Crescent Lake

**Clark**

Battleground Lake

**Cowlitz**

Merrill Lake

**Grant**

Deep Lake  
Potholes Res.  
Coulee Lake  
Soap Lakes  
Sun Lakes

**Grays Harbor**

Sylvia Lake

**Island**

Cranberry Lake

**Jefferson**

Anderson Lake

**King**

Cedar Lake  
Elbow Lake  
Green Lake  
Green River  
Margaret Lake  
Sammamish Lake  
Sammamish River  
Sammamish Slough  
Walsh Lake

**Kittitas**

Easton Lake

**Klickitat**

Horsethief Lake  
Roland Lake

**Lewis**

Mineral Lake

**Okanogan**

Alta Lake  
Buffalo Lake  
Campbell Lake  
Conconully Lake  
Conconully Res.  
Crawfish Lake  
Omak Lake  
Osoyoos Lake  
Pearrygin Lake

**Pacific**

Middle Nemah River  
North Nemah River  
Smith Creek

**Pend Oreille**

Browns Lake (on Brown Cr)  
Calispell Lake  
Cooks Lake  
Conklin Lake  
Davis Lake  
Half Moon Lake  
Mystic Lake  
No Name Lake  
Shearer Lake  
Vanee Lake

**Pierce**

Clear Lake  
Spanaway Lake  
Steilacoom Lake  
Wapato Lake

**Skagit**

Beaver Lake  
Caskey Lake  
Cranberry Lake  
Everett Lake  
Minkler Lake  
Pass Lake  
Sixteen Lake  
Whistle Lake

**Skamania**

Goose Lake  
Mosquito Lake  
South Prairie Lake  
Stump (Tunnel) Lake

**Snohomish**

Ballinger Lake  
Chaplain Lake  
Flowing Lake  
Goodwin Lake  
Ki Lake  
Martha Lake  
Pass Lake  
Roesiger Lake  
Serene Lake  
Shoecraft Lake  
Silver Lake  
Stevens Lake  
Stickney Lake  
Storm Lake

**Thurston**

Deep Lake  
Hicks Lake  
Long Lake  
Patterson Lake  
Summit Lake  
Ward Lake

**Whatcom**

- Budd Lake
- Bug Lake
- Caine Lake
- Fishtrap Creek
- Johnson Creek
- Padden Lake
- Toad or Emerald Lake

~~((3))~~ (e) It is unlawful to fish for crawfish within 1/4 mile of the shoreline of developed parks.

(f) It is ~~(lawful)~~ permissible for an individual fisherman to fish for crawfish for commercial use in the waters set out below with up to the number of pots shown.

Name of Lake, River, or Slough	County	Max. Pots Allowed
Alder Lake (Res.)	Pierce/Thurston	200
Aldwell Lake (Res.)	Clallam	100
Alkali Lake	Grant	100
Bachelor Slough	Clark	100
Baker Lake	Whatcom	200
Banks Lake	Grant	200
Big Lake	Skagit	200
Black Lake	Thurston	200
Blue Lake	Grant	200
Bonaparte Lake	Okanogan	100
Buckmire Slough	Clark	100
Camas Slough	Clark	100
Campbell Lake	Skagit	100
Cassidy Lake	Snohomish	100
Cavanaugh Lake	Skagit	200
Chehalis River	Lewis/Grays Harbor	100
Chelan Lake	Chelan	200
Clear Lake	Skagit	100
Coal Creek Slough	Cowlitz	100
Columbia River	Clark, Cowlitz, etc.	200
Copalis River	Grays Harbor, etc.	100
Cowlitz River	Clark, Cowlitz, etc.	100
Curlew Lake	Ferry	200
Cushman Lake #1	Clark	100
Deep River	Wahkiakum	100
Deschutes River	Thurston	100
Diablo Lake	Whatcom	200
Drano Lake	Skamania	100
Elochoman River	Wahkiakum	100
Erie Lake	Skagit	100
Evergreen Reservoir	Grant	100
Fisher Island Slough	Cowlitz	100
Goose Lake (upper)	Grant	100
Grays River	Pacific	100
Harts Lake	Pierce	100
Hoquiam River	Grays Harbor	100
Humtulpis River	Grays Harbor	100
John's River	Grays Harbor	100
Kapowsin Lake	Pierce	200
Kalama River	Cowlitz, etc.	100

Name of Lake, River, or Slough	County	Max. Pots Allowed
Klickitat	Klickitat	100
Lackamas Lake (Res.)	Clark	100
Lake River	Clark	100
Lawrence Lake	Thurston	100
Lenore Lake	Grant	200
Lewis River	Clark/Cowlitz	100
Loomis Lake	Pacific	100
Mayfield Lake	Lewis	200
McIntosh Lake	Thurston	100
McMurray Lake	Skagit	100
Merwin Lake	Clark/Cowlitz	200
Moses Lake	Grant	200
Naselle River	Pacific, etc.	100
Nisqually River	Pierce, etc.	100
Nooksack River	Whatcom	100
North River	Grays Harbor	100
Palmer Lake	Okanogan	100
Patterson Lake (Res.)	Okanogan	100
Portage Bay	King	100
Rattlesnake Lake	King	100
Ross Lake (Res.)	Whatcom	200
Salmon Lake	Okanogan	100
Satsop River	Grays Harbor	100
Shannon Lake (Res.)	Skagit	200
Sidley Lake	Okanogan	100
Silver Lake	Pierce	100
Silver Lake	Cowlitz	200
Skagit River	Skagit/Whatcom	200
Skamokawa River	Wahkiakum	100
Snake River	Franklin/Walla Walla	200
Snohomish River	Snohomish	100
St. Clair Lake	Thurston	100
Swift Lake (Res.)	Skamania	200
Terrell Lake	Whatcom	100
Toutle River	Cowlitz	100
Union Lake	King	200
Vancouver Lake	Clark	200
Warden Lake	Grant	100
Washington Lake	King	200
Washougal River	Clark/Skamania	100
Whitestone Lake	Okanogan	100
Willapa River	Pacific	100
Wiser Lake	Whatcom	100
Wind River	Cowlitz	100
Wishkah River	Grays Harbor	100
Woodland Slough	Clark	100
Wynoochee River	Grays Harbor	100
Yakima River	Kittitas	100
Yale Lake (Res.)	Clark/Cowlitz	200

~~((4))~~ (g) Commercial crawfish harvest permits will be issued to ~~((prescribe))~~ limit the number of ~~((allowable))~~ crawfish pots permissible per fisherman per body of water in suitable crawfish harvest sites not listed in subsections ~~((2))~~ (4)(d) and ~~((3))~~ (e) of this section as follows:

~~((a))~~ (i) Under 20 acres - No commercial harvest.

- ~~((b))~~ (ii) 20 acres to 100 acres - 50 pots.  
~~((c))~~ (iii) 101 acres to 400 acres - 100 pots.  
~~((d))~~ (iv) Over 400 acres - 200 pots.

~~((e))~~ (h) Permits ~~((will))~~ may be issued only in waters where fishing will not conflict with high density residential or recreational areas~~((, and))~~. No permit will be issued where developed parks encompass more than ~~((one-half))~~ 1/2 of the water shoreline.

~~((f))~~ The department of fisheries shall fix the maximum number of pots to be permitted in any given body of water. Once the permitted maximum number of pots for any given body of water has been reached, no further permits will be issued. Permits will be issued on a first come, first serve basis consistent with all other regulations concerning issuance of commercial crawfish harvest permits.

(5) Licensing: A shellfish pot fishery license is the license required to operate the gear provided for in this section. (5) It is unlawful to discard any crawfish bait into the waters of the state.

(6) This section does not apply to the commercial culture of crawfish at a registered aquatic farm.

(7) It is unlawful to fish for or possess crawfish taken for commercial purposes in violation of this section. Violation of this section is punishable under RCW 77.15.500, 77.15.520, 77.15.522, or 77.15.540, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending Order 06-197, filed 8/10/06, effective 9/10/06)

**WAC 220-52-019 Geoduck clams—Requirements, gear and unlawful acts.** (1) It is unlawful to ~~((take, fish for or possess geoduck clams taken for commercial purposes from any of the beds of navigable waters of the state of Washington except as provided in RCW 75.24.100 and rules of the director.~~

~~((2)(a) Only))~~ use any gear other than a manually operated water jet~~((, the))~~ with a nozzle ~~((of which shall not exceed))~~ 5/8 of an inch or less inside ~~((diameter may be used))~~ to commercially harvest geoducks ~~((elams. Use of any other gear requires))~~, unless a permit to use other gear is first obtained from the director.

~~((b))~~ (2) It is unlawful ~~((in the commercial harvest of geoducks))~~ for through-hull fittings for water discharge hoses connected to ~~((the))~~ harvest gear to be below the water's surface ~~((of the water))~~ in the commercial harvest of geoducks. ~~((Any))~~ Through-hull fittings connected to ~~((the))~~ harvest gear ~~((which is))~~ above the water's surface ~~((of the water))~~ must be visible at all times.

~~((3))~~ It is unlawful to take or fish for geoduck clams taken for commercial purposes between one-half hour before official sunset or 7:00 p.m. whichever is earlier and 7:00 a.m. No geoduck harvest vessel may be on a geoduck tract or harvest area after 7:30 p.m. or before 6:30 a.m. It is unlawful to take or fish for geoduck clams on Sundays or on state holidays as defined by the office of financial management. It is unlawful to possess geoduck clams taken in violation of this section.

(4) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

(5) It is unlawful to possess only the siphon or neck portion of a geoduck clam aboard a geoduck harvest vessel, except when a geoduck is incidentally damaged during harvest and must be reported under a department of natural resources harvest agreement.

(6) It is unlawful to retain any food fish or shellfish other than geoduck clams during geoduck harvesting operations, except for horse clams (*Tresus capax* and *Tresus nuttallii*) when horse clam harvest is provided for under a department of natural resources harvest agreement.

(7) It is unlawful for more than two divers from any one geoduck harvest vessel to be in the water at any one time.

(8) The following documents must be on board the geoduck harvesting vessel at all times during geoduck operations:

(a) A copy of the department of natural resources geoduck harvesting agreement for the tract or area where harvesting is occurring;

(b) A map of the geoduck tract or harvest area and complete tract or harvest area boundary identification documents or photographs issued by the department of natural resources for the tract or harvest area;

(c) A geoduck diver license for each diver on board the harvest vessel or in the water; and

(d) A geoduck fishery license as described in WAC 220-52-01901.

(9) It is unlawful to process geoducks on board any harvest vessel.

(10) It is unlawful to take or fish for geoduck clams for commercial purposes outside the tract or harvest area designated in the department of natural resources geoduck harvesting agreement required by subsection (8)(a) of this section. It is unlawful to possess geoduck clams taken in violation of this subsection.

(11) It is unlawful to harvest geoduck clams in areas deeper than seventy feet below mean lower low water (0.0 ft.).

(12) Holders of geoduck fishery licenses shall comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. Some of those regulations appear at 29 C.F.R. Part 1910, Subpart T.)

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

**WAC 220-52-01901 Commercial geoduck harvest license(s).** (1) ~~((A))~~ It is unlawful to commercially harvest geoducks unless the harvester possesses a valid, director-issued geoduck fishery license ~~((issued by the director is required for the commercial harvest of geoduck clams. Geoduck fishery licenses were previously called "geoduck validations"))~~.~~(("))~~

A geoduck fishery license card is a "license card" under WAC 220-69-270.

(2) Only persons holding current geoduck harvest agreements from the department of natural resources or their agents may apply for geoduck fishery licenses. An application for a geoduck fishery license must be fully completed on a form provided by the department (~~(, must be complete,)~~) and (~~(must be)~~) accompanied by a copy of the geoduck harvest agreement for which the license is sought.

(3) Each geoduck fishery license authorizes the use of two water jets or other units of geoduck harvest gear. Commercial geoduck harvesting gear must meet the requirements of WAC 220-52-019 (~~((2). A geoduck fishery license card is a "license card" under WAC 220-69-270)).~~

(4)  Holders of geoduck fishery licenses must comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq. Some of these regulations appear at 29 C.F.R. Part 1910, Subpart T.

(a) The director may suspend or revoke a geoduck license used in violation of commercial diving safety regulations, including 29 C.F.R. Part 1910, Subpart T, adopted under the Occupational Safety and Health Act of 1970. The procedures of chapter 34.05 RCW apply to (~~(such)~~) these suspensions or revocations.

(b) If there is a substantial probability that a violation of commercial diving safety regulations could result in death or serious physical harm to a person (~~(engaged in)~~) harvesting geoducks (~~(clams)~~), the director may immediately suspend the license (~~(immediately)~~) until the violation (~~(has been)~~) is corrected. If the violator fails to correct the violation within ten days of notice of the violation, the director may revoke the violator's geoduck license. The director (~~(shall)~~) may not revoke a geoduck license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.

#### NEW SECTION

**WAC 220-52-01902 Commercial geoduck harvest—Requirements and unlawful acts.** (1) It is unlawful to take, fish for, or possess geoduck clams taken for commercial purposes from the substrate of any Washington state waters except as provided by RCW 77.60.070 and department rule.

(2) It is unlawful to engage in geoduck harvesting operations unless the following documents are onboard the geoduck harvesting vessel:

(a) A copy of the department of natural resources (DNR) geoduck harvesting agreement for the tract or area where harvesting is occurring;

(b) A map of the geoduck tract or harvest area and complete tract or harvest area boundary identification documents or photographs issued by DNR for the tract or harvest area;

(c) A geoduck diver license for each diver on board the harvest vessel or in the water; and

(d) A geoduck fishery license as described in WAC 220-52-01901.

(3) It is unlawful for more than two divers from any one harvest vessel to be in the water at any one time.

(4) It is unlawful to process geoduck clams on board any harvest vessel.

(5) It is unlawful to possess only the siphon or neck portion of a geoduck aboard a geoduck harvest vessel, except when the geoduck is incidentally damaged during harvest. Geoduck damage sustained incidental to harvest must be reported under a DNR harvest agreement.

(6) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

(7) It is unlawful to retain any food fish or shellfish other than geoduck clams during geoduck harvesting operations, except for horse clams (*Tresus capax* and *Tresus nuttallii*) when horse clam harvest is provided for under a DNR harvest agreement.

(8) Violation of this section is punishable by RCW 77.15.520, 77.15.540, or 77.15.550, depending on the circumstances of the violation.

#### NEW SECTION

**WAC 220-52-01903 Commercial geoduck harvest—Time and area restrictions.** (1) It is unlawful to harvest geoducks for commercial purposes during the following time and day restrictions:

(a) Between one-half hour before official sunset or 7:00 p.m., whichever is earlier, and 7:00 a.m.

(b) It is unlawful for a geoduck harvest vessel to be on a geoduck tract or harvest area after 7:30 p.m. or before 6:30 a.m.

(c) It is unlawful to take or fish for geoducks on Sundays or on state holidays as defined by the office of financial management.

(2) It is unlawful to take or fish for geoducks for commercial purposes outside the tract or harvest area designated in the department of natural resources harvest agreement required by WAC 220-52-01901 and 220-52-01902.

(3) It is unlawful to harvest geoducks in areas deeper than 70 feet below mean lower low water (0.0 ft.).

(4) It is unlawful to possess geoducks taken in violation of this section.

(5) Violation of this section is a misdemeanor or class C felony punishable by RCW 77.15.550, depending on the circumstances of the violation or the value of the shellfish taken.

AMENDATORY SECTION (Amending WSR 08-07-003, filed 3/5/08, effective 4/5/08)

**WAC 220-56-315 Personal use crab(~~(s)~~), shrimp, crawfish—Unlawful acts.** (1) It is unlawful to take and possess crab(~~(s)~~), shrimp, and crawfish taken for personal use except by hand or with hand dip nets, ring nets, shellfish pots, (~~(and)~~) or any hand-operated instrument that will not penetrate the shell. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 or 77.15.382 depending on the circumstances of the violation.

(2) It is unlawful to set, fish, or pull more than (~~(two)~~) 2 units of gear at any one time except:

(a) In Puget Sound waters it is unlawful to set, fish, or pull at any one time more than (~~(two)~~) 2 units of crab gear and (~~(two)~~) 2 additional units of shrimp gear.

(b) It is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled in Catch Record Card

Areas 4 through 13 to have on board or to fish more than ~~((four))~~ 4 shrimp pots.

(c) ~~((In the Columbia River))~~ It is unlawful to set, fish, or pull more than ~~((three))~~ 3 units of crab gear in the Columbia River.

(d) ~~((In fresh water))~~ It is ~~((lawful))~~ permissible to use up to ~~((five))~~ 5 units of gear to fish for crawfish in fresh water.

(3) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

(4) It is unlawful to salvage or attempt to salvage shellfish pot gear from Hood Canal that has been lost without first obtaining a permit, issued by the director, authorizing ((such)) that activity ((issued by the director, and)). It is unlawful to fail to comply with all provisions of ~~((such))~~ the permit authorizing the salvage of gear from Hood Canal. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

~~((5))~~ ~~((It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.~~

~~((6))~~ It is unlawful to dig for or possess ghost or mud shrimp taken for personal use by any method except hand operated suction devices or dug by hand. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

~~((7))~~ ~~One unit of gear is equivalent to one ring net or one shellfish pot.)~~ (6) It is unlawful to have more than one unit of unattended gear attached to a buoy line or to fail to have a separate buoy for each unit of gear. One unit of gear means one ring net or one shellfish pot. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty.

~~((8))~~ (7) In waters open only on certain days or certain hours during the day, except for the night closure set out in subsection (9) of this section, it is unlawful to fail to remove gear from the water when fishing for shellfish is not allowed ~~((, and)).~~ It is also unlawful to fail to remove gear from the water by one hour after sunset if fishing is not allowed on the next calendar day. In waters that are open continuously, except for the night closure set out in subsection (9) of this section, gear may be left in the water during the night closure. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.

~~((9))~~ (8) It is unlawful to set or pull shellfish pots, ring nets or star traps from a vessel in Catch Record Card Areas 1-13 from one hour after official sunset to one hour before official sunrise. Violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.

~~((10))~~ ~~It is unlawful to possess soft-shelled crab for any personal use purpose. Violation of this subsection shall be an infraction, punishable under RCW 77.15.160.)~~

#### NEW SECTION

**WAC 220-56-317 Personal use shrimp pot gear requirements.** (1) All buoys attached to shrimp gear must be yellow or fluorescent yellow in color. Flags and staff, if attached, may be any color.

(2) It is unlawful to take, fish for, or possess shrimp taken for personal use with shellfish pot gear unless the gear meets the following requirements:

(a) A shrimp pot may not exceed 10 feet in perimeter and 1-1/2 feet in height.

(b) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material, except the entrance tunnels must have the minimum mesh opening size specified in subsection (2)(c) of this section.

(c) The minimum mesh size for shrimp pots is one inch, defined as a mesh that a 7/8 inch square peg will pass through each mesh opening. Flexible (web) mesh pots must have an opening with a mesh size of a minimum of 1-3/4 inch stretch measure.

June 1 through October 15, Area 4 east of the Bonilla-Tatoosh line, and Areas 5 through 13:

(i) In any Marine Area or portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is 1/2-inch.

(ii) 1/2-inch mesh is defined as mesh that a 3/8-inch square peg will pass through each mesh opening, except for flexible (web) mesh pots where the opening must be a minimum of 1-1/8 inch stretch measure.

(d) All entrance tunnels must open into the pot from the side.

(e) The sum of the maximum widths of all entrance tunnels must not exceed half of the perimeter of the bottom of the pot.

#### NEW SECTION

**WAC 220-56-318 Personal use crab pot gear requirements.** (1) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color.

(2) It is unlawful to fish for crab using shellfish pot gear greater than 13 cubic feet in volume.

(3) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless:

(a) The gear is equipped with 2 or more escape rings located in the upper half of the pot; and

(b) Escape rings are 4-1/4 inches inside diameter or larger, except in the Columbia River where escape ring minimum size is 4 inches inside diameter.

(4) It is unlawful to use mesh size for crab pots smaller than 1.5 inches.

AMENDATORY SECTION (Amending WSR 08-07-003, filed 3/5/08, effective 4/5/08)

**WAC 220-56-320 Personal use shellfish gear—Unlawful acts.** (1) ~~((It is unlawful for the owner or operator of any personal use shellfish gear to leave such gear unattended in the waters of the state unless said gear is marked with a buoy to which shall be affixed in a permanent visible and legible manner the first and last name and permanent mailing address of the operator. It is unlawful for more than one person's name and address to appear on the same marker buoy.))~~ It is unlawful to violate the following provisions regarding unattended shellfish gear:

(a) Unattended shellfish gear must ((have)) be marked with a buoy that lists the first and last name and permanent mailing address of the owner.

(i) The information on the buoy must be permanent, visible, and legible.

(ii) Only one person's name and address may appear on a marker buoy.

(b) All buoys must consist of durable material. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy.

(c) Buoys must remain visible on the surface at all times, except during extreme tidal conditions.

(d) The line attaching ((the)) a buoy to ((the)) shellfish gear must be weighted sufficiently to prevent the line from floating on the water's surface.

~~((b) All buoys must consist of durable material and remain visible on the surface at all times except during extreme tidal conditions. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans or any other container.~~

~~(c) All buoys attached to shrimp gear must be yellow or fluorescent yellow in color. Flags and staff, if attached, may be any color.~~

~~(d) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color.~~

~~(2) It is unlawful for the maximum perimeter of any shrimp pot to exceed 10 feet, and the pot shall not exceed 1-1/2 feet in height.~~

~~(3) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless such gear is equipped with not less than two escape rings located in the upper half of the pot which are not less than 4-1/4 inches inside diameter in all waters except in the Columbia River the escape ring minimum size is 4 inches inside diameter. It is unlawful to use mesh size for crab pots less than 1-1/2 inches.~~

~~(4) It is unlawful to take, fish for or possess shrimp taken for personal use with shellfish pot gear unless such gear meets the following requirements:~~

~~(a) The entire top, bottom, and sides of the shellfish pots must be constructed of mesh material and except for the entrance tunnels have the minimum mesh opening size defined below.~~

~~(b) The minimum mesh size for shrimp pots is one inch, defined as a mesh that a 7/8-inch square peg will pass through each mesh opening except for flexible (web) mesh pots where~~

~~the opening must be a minimum of one and three-quarters inch stretch measure except:~~

~~June 1 through October 15, Area 4 east of the Bonilla-Tatoosh line, and Areas 5 through 13: In any Marine Area of portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is one-half inch, defined as a mesh that a 3/8-inch square peg will pass through each mesh opening except for flexible (web) mesh pots where the opening must be a minimum of one and one-eighth inch stretch measure.~~

~~(e) All entrance tunnels must open into the pot from the side.~~

~~(d) The sum of the maximum widths of all entrance tunnels must not exceed 1/2 the perimeter of the bottom of the pot.~~

~~(5)) (2) It is unlawful to fish for or possess shellfish taken for personal use with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:~~

~~(a) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated, 100 percent cotton twine no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.~~

~~(b) An opening in the pot mesh no less than three inches by five inches which is laced or sewn closed with untreated, 100 percent cotton twine no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.~~

~~(c) Attachment of pot lid or one pot side serving as a pot lid with no more than ((three)) 3 single loops of untreated 100 percent cotton or other natural fiber twine no larger than thread size 120 so that the pot lid or side will open freely if the twine or fiber is broken.~~

~~((6)) (3) It is unlawful to set shellfish pots in a manner that they are not covered by water at all times.~~

~~((7) It is unlawful to fish for crab using shellfish pot gear greater in volume than thirteen cubic feet.~~

~~(8)) (4) Use of gear in violation of this section is an infraction, punishable under RCW 77.15.160, except failure to use untreated cotton twine as provided for in subsection ((5)) (2) of this section ((remains)) is a misdemeanor punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.~~

~~((9)) (5) It is unlawful to possess shellfish taken with gear in violation of the provisions of this section. Possession of shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the shellfish were taken with ((such)) that gear. Violation of this subsection is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.~~

AMENDATORY SECTION (Amending Order 11-29, filed 4/11/11, effective 5/12/11)

**WAC 220-56-330 Crab—Areas and seasons—Personal use.** (1) It is unlawful to fish for or possess crab taken

for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 8-1, 8-2, 9, 10, 11, 12, and 13: Open 7:00 a.m., July 1 through Labor Day, Thursday through Monday of each week.

(b) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence due west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m., July 15 through September 30, Thursday through Monday of each week.

(c) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m. August 15 through September 30, Thursday through Monday of each week.

(2) It is unlawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Areas 1, 2, 3, and Area 4 west of the Bonilla-Tatoosh line except during the period from December 1 through September 15. Open to gear other than shellfish pot gear year-round.

(3) The Columbia River upstream from a line projected from the outermost end of the north jetty to the exposed end of the south jetty is open to crab fishing for personal use year-round.

(4) It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.

(5) Violation of this section is a misdemeanor, punishable under RCW 77.15.380. Unlawful recreational fishing in the second degree—Penalty.

AMENDATORY SECTION (Amending Order 04-39, filed 3/4/04, effective 5/1/04)

**WAC 220-56-335 Crab—Unlawful acts—Personal use.** (1) It is unlawful for any person to take or possess (~~for personal use~~) any female Dungeness crab(s) for personal use.

(2) It is unlawful to take or possess any male Dungeness crabs taken for personal use (~~which measure~~) measuring less than the following (sizes) caliper measurements:

(a) In Puget Sound (all contiguous waters east of the Bonilla-Tatoosh Line) - 6 1/4 inch minimum size.

(b) In coastal waters west of the Bonilla-Tatoosh Line, Pacific Ocean waters except when fishing from the north jetty of the Columbia River, Grays Harbor, Willapa Bay - 6 inch minimum size.

(c) In the Columbia River upstream of a line from the outermost end of the north jetty to the exposed end of the south jetty, and when fishing from the north jetty of the Columbia River - 5 3/4 inch minimum size.

(3) It is unlawful to take or possess any red rock crab(s) taken for personal use that measure less than ~~((five))~~ 5 inches. Either sex may be retained.

(4) All crab measurements (~~shall~~) must be made at the widest part of the shell (caliper measurement) immediately in front of the points (tips).

(5) It is unlawful to possess in the field any crab or crab parts (~~thereof~~) without also retaining the back shell.

(6) It is unlawful to possess soft-shelled crab for any personal use purpose. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending Order 95-10, filed 1/30/95, effective 5/1/95)

**WAC 220-56-365 Razor clams—Unlawful acts.** (1) It is unlawful to return any razor clams to the beach or water regardless of size or condition, and all razor clams taken for personal use must be retained by the digger as a part of his or her daily limit.

(2) It is unlawful to drive or operate any motor-propelled vehicle, land any airplane, or ride or lead any horse on the razor clam beds of the state of Washington, as defined in WAC 220-16-257.

(3) A violation of this section is an infraction, punishable under RCW 77.15.160.

## WSR 12-17-147

### PROPOSED RULES

### DEPARTMENT OF AGRICULTURE

[Filed August 22, 2012, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-121.

Title of Rule and Other Identifying Information: The department of agriculture (DOA) is proposing an amendment to WAC 16-237-195 Fees for warehouse audit and related services, increasing the fee for year-end inventories.

Hearing Location(s): Spokane County Cooperative Extension, 222 North Havana Room F, Spokane, WA 99202, on October 8, 2012, at 11:00 a.m.

Date of Intended Adoption: October 17, 2012.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2085, by 5:00 p.m., October 8, 2012.

Assistance for Persons with Disabilities: Contact WSDA agency receptionist by calling TTY 1-800-833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 16-237-195 will enable the warehouse audit program to recover the final portion of the cost incurred in performing the requested year-end inventory program. The department is proposing to increase the year-end inventory fee from ten percent to twenty percent with a minimum fee of four hundred dollars. The warehouse audit program is also proposing to increase the hourly rate charged from \$33 per hour to \$56 per hour consistent with the proposed hourly fee increase for the grain inspection program. This fee proposal is supported by the advisory board for the grain warehouse audit program to cover the cost of the program and the addition of one auditor.

Reasons Supporting Proposal: This proposed fee increase should generate sufficient revenue to fully cover increased costs for the warehouse audit program. This is the second step of an overall program fee increase of \$145,000 recommended by the warehouse audit program advisory board. The statutory fee increase passed by the legislature in 2012 is estimated to generate \$126,700 of the amount and this proposed rule change is estimated to generate the remaining \$18,300 needed to hire an additional auditor and cover increasing costs.

Statutory Authority for Adoption: RCW 22.09.020(13), 22.09.790, chapter 34.05 RCW, 3ESHB 2127, chapter 7, Laws of 2012.

Statute Being Implemented: Chapter 22.09 RCW, Agricultural commodities.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [DOA], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Don Potts, 617 North Fancher Road, Building 103D, Spokane, WA 99212, (509) 533-2487.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** The Washington state department of agriculture's grain warehouse audit program is proposing to amend chapter 16-237 WAC, Commodity storage warehouses and grain dealers.

The purpose of this chapter is to establish regulations and fees for services provided by the grain warehouse audit program. The fees established in this chapter are to be set at a level that will ensure full cost recovery for services rendered.

The proposed amendments to this chapter include:

- Increasing the grain warehouse audit program fee for the year-end inventories from ten percent before July 30 and fifteen percent after July 30 to a flat rate of twenty percent, with a minimum fee of \$400.
- Increasing the hourly rate from \$33 per hour to \$56 per hour consistent with the proposed hourly fee increase for the grain inspection program.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS):** Chapter 19.85 RCW, the Regulatory Fairness Act,

requires an analysis of the economic impact proposed rules will have on regulated small businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs on businesses in an industry.

"Minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll.

"Small business" means a business that employs fifty or fewer employees.

**INDUSTRY ANALYSIS:** The proposed rule impacts large and small businesses that pay year-end audit fees. These businesses fall primarily under the North American Industry Classification System (NAICS) code 493130 Farm Product Warehousing and Storage.

The grain warehouse audit program has analyzed the proposed rule amendments and the costs of compliance and has determined that the proposed rule amendments will not impose more than minor costs on WSDA-regulated businesses.

**INVOLVEMENT OF SMALL BUSINESSES:** Small businesses have been involved in writing the proposed rules and in providing the department with the expected costs associated with the rule revisions. The grain warehouse audit program has attended commission and trade meetings and has met individually with business owners throughout the state. The program will continue to provide information and obtain input from industry on the proposed rule. A public hearing is scheduled for early October.

**COST OF COMPLIANCE:** RCW 19.85.040, the Regulatory Fairness Act, directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs. Agencies must also consider whether compliance with the rule will result in loss of sales or revenue. RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules. Agencies are to use one or more of the following as a basis for comparing costs:

- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

*Analysis of Cost of Compliance:* A small business economic impact assessment survey was mailed to forty-nine grain warehouse audit program customers. Twelve survey responses were received, all from small businesses. Of the twelve small business responses, all but one business indicated the proposed fee increase would not create or eliminate jobs, would not cause a loss in sales or revenue, or cause the business to incur compliance costs. One small business responded that the proposed increase in fees would cause the loss of one job and incur an annual revenue loss of \$300. Additionally, one customer commented on the survey that any proposed fee increase would be passed on to customers,

and suggested more support for the program's audit staff and reducing staff in Olympia instead of raising fees.

*Analysis of Disproportionate Economic Impact:* When costs associated with proposed rules are more than minor, the Regulatory Fairness Act requires a comparison of the costs to small businesses with those of ten percent of the largest businesses in the regulated industry. The costs small businesses will incur to comply with the proposed rules are not more than minor and are not disproportionate between small and large businesses.

Additionally, while year-end inventory fees will rise from five to ten percent, with a minimum fee of \$400, this fee remains much less than the grain trade would pay private auditors to review year-end inventories.

**JOBS CREATED OR LOST:** Responses from small businesses to WSDA's small business economic impact survey indicate that there will not be any jobs added because of the fee increases. One small business indicated that one job may be lost due to the fee increase.

**CONCLUSION:** The grain warehouse audit program has analyzed the economic impact of the proposed rules on small businesses and has concluded that the costs small businesses will incur to comply with the proposed rules are not more than minor and are not disproportionate between small and large businesses.

Please contact Don Potts, grain warehouse audit program manager, if you have any questions at dpotts@agr.wa.gov or at (509) 533-2487.

A copy of the statement may be obtained by contacting Don Potts, 617 North Fancher Road, Building 103D, Spokane, WA 99212, phone (509) 533-2487, fax (509) 533-2486, e-mail dpotts@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state DOA is not a listed agency in RCW 34.05.328 (5)(a)(i).

August 22, 2012  
Brad J. Avy  
Assistant Director

AMENDATORY SECTION (Amending WSR 05-07-080, filed 3/15/05, effective 4/15/05)

**WAC 16-237-195 Fees for warehouse audit and related services.** The following fees apply to the following services:

(1) For year-end inventories requested by a warehouse operator, the department charges ~~((the following:~~

<b>A fee of:</b>	<b>If requested:</b>
(a) 10% of the warehouse license fee	By July 30th of each year
(b) 15% of the warehouse license fee	After July 30 of each year))

twenty percent of the warehouse license fee with a minimum fee of four hundred dollars.

(2)(a) The hourly rate for all other services performed by the warehouse audit program at the request of warehouse operators, grain dealers and/or other government agencies is ~~\$(33.00)~~ \$6.00 per hour.

(b) These services include, but are not limited to, technical assisted audits of records and inventory, observation of sampling of commodities, collection of samples for the Karnal Bunt Survey, and remeasurement of commodities and storage bins.

(3) In addition to the hourly rate established in subsection (2)(a) of this section, the department assesses appropriate charges for overtime, mileage, meals, and lodging expenses incurred by department personnel when providing the types of services identified in subsection (2)(b) of this section.

**WSR 12-17-148  
PROPOSED RULES  
OFFICE OF  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2011-17—Filed August 22, 2012, 8:54 a.m.]

Supplemental Notice to WSR 12-07-092.

Preproposal statement of inquiry was filed as WSR 11-16-071.

Title of Rule and Other Identifying Information: Property and casualty insurance rate capping rules, transition rating rules, rate stability formulas, and other rating methods.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on September 25, 2012, at 1:30 p.m.

Date of Intended Adoption: September 26, 2012.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by September 24, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by September 24, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will:

1. Specify situations in which these rating rules, formulas and other rating methods would or would not result in rates that are unfairly discriminatory;
2. Clarify the meaning of RCW 48.19.040 as it applies to these rating rules, formulas and other rating methods and the rate manuals which they involve; and
3. Establish processes and procedures that insurers must use when implementing rate capping rules, transition rating rules, rate stability formulas, and other rating methods.

Reasons Supporting Proposal: Using advanced information technology and predictive modeling methods, property and casualty insurers are implementing increasingly sophisticated systems for calculating insurance premiums. When new rating factors are inserted into premium formulas and then applied to an existing book of business, many policyholders may see significant premium changes. A similar situation occurs when a book of business is being moved from one insurer to another. To mitigate this effect, insurers often propose rating rules or formulas that reduce the magnitude of the premium changes for certain policyholders. These rating rules or formulas, however, may result in different premiums being charged to similarly situated policyholders, which may

be contrary to RCW 48.18.480. The proposed rule specifies the situations in which these rating rules or formulas would or would not result in rates that are unfairly discriminatory. The proposed rule also clarifies how the requirements of RCW 48.19.040 apply to these situations. The proposed rule would provide the commissioner with objective standards by which to evaluate and approve or disapprove insurers' proposed rating rules or formulas, and consumers would be better protected from unfairly discriminatory rates.

Statutory Authority for Adoption: RCW 48.02.060, 48.19.080, and 48.19.370.

Statute Being Implemented: RCW 48.19.020, 48.19.040, and 48.19.043.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Lee Barclay, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7115; Implementation and Enforcement: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule directly affects only issuers of personal lines of property and casualty insurance. None of the current domestic issuers of personal lines insurance meets the definition of a small business under the law. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

August 22, 2012

Mike Kreidler  
Insurance Commissioner

## NEW SECTION

**WAC 284-24-130 Rate stability rules.** (1) This section prescribes standards that apply to insurers' rate stability rules, which are also sometimes called "transition rules" or "premium-capping rules." For the purposes of this section, a "rate stability rule" means a rating rule created by an insurer to limit premium changes experienced by policyholders due to the insurer's:

- (a) Revision of its own rating plan;
  - (b) Acquisition or planned acquisition of a book of business from an unaffiliated insurer; or
  - (c) Moving or receiving business from an affiliated insurer.
- (2) Insurers must file rate stability rules with the commissioner under RCW 48.19.040(1) and 48.19.043(2). If an insurer has a rate stability rule, it must be included in its filed manual of rates and rules.

(3) Subsections (4) through (11) of this section apply only to personal lines of property and casualty insurance and only to rate stability rules filed on or after the effective date of this section.

(4) Rate stability rules that do not satisfy the requirements of this section are considered to be unfairly discriminatory and in violation of RCW 48.19.020.

(5) Insurers must not use rate stability rules as:

(a) A means of extending the applicability of a previously filed rate stability rule; or

(b) A substitute for multiple filings of base rate changes or other rate changes that have similar premium effects on all policyholders. For example, if an insurer desires a twenty-one percent rate increase across the board, it cannot file a rate stability rule that has the effect of implementing two ten percent changes one year apart.

(6) In each rate filing that proposes a rate stability rule the insurer must describe the circumstances, under subsection (1) of this section, that make a rate stability rule necessary.

(7) Each rate stability rule must specify the class or classes of risks to which it applies. Only policyholders affected by one of the situations described in subsection (1) of this section may be subject to a rate stability rule.

(8) Each rate stability rule must apply only to that portion of the premium change that results from one of the situations described in subsection (1) of this section. A rate stability rule must not apply to premium changes resulting from changes in coverage, exposure, or policyholder characteristics, or from subsequent rate changes by the insurer.

(9) Each rate stability rule must state the date or number of renewals after which the rule will no longer be in effect. A rate stability rule may not continue to affect premiums for new or renewal policies having effective dates that are more than three years after the effective date of the rate stability rule.

(10) A rate stability rule must affect only policyholders who would otherwise experience a premium change of more than ten percent for an annual policy, or five percent for a six-month policy, due to one of the situations described in subsection (1) of this section. The rate stability rule must not limit the policyholder's premium change to less than ten percent for an annual policy, or five percent for a six-month policy, at each renewal.

(11) In each rate filing after the implementation of a rate stability rule, the insurer must take into consideration, in an actuarially sound manner, the effect of the rate stability rule on the indicated rate level.

## **WSR 12-17-152**

### **PROPOSED RULES**

### **FOREST PRACTICES BOARD**

[Filed August 22, 2012, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-084 and 12-11-112.

Title of Rule and Other Identifying Information: Conversions and forest practices applications rule making incorporates portions of several amendments to chapter 76.09 RCW, Forest practices into Title 222 WAC, Forest practices board; and includes several minor corrections and clarifications.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA, on October 10, 2012, at 4:00 p.m.

Date of Intended Adoption: November 13, 2012.

Submit Written Comments to: Patricia Anderson, DNR, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by October 10, 2012.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400 by September 28, 2012, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to incorporate amendments and additions to chapter 76.09 RCW that occurred in 2007, 2011, and 2012, into the forest practices rules and to make minor corrections and clarifications.

Reasons Supporting Proposal: Several changes in chapter 76.09 RCW that occurred in 2007, 2011, and 2012 created inconsistencies between forest practices laws and forest practices rules.

- The pertinent laws are RCW 76.09.050 (amended in 2011), 76.09.060 (amended in 2007 and 2012), 76.09.240 (amended in 2007), and 76.09.470 (new in 2007).
- The affected rules are in chapters 222-12, 222-16, and 222-20 WAC.

In addition, minor corrections and clarifications are proposed in several sections in chapters 222-08, 222-12, 222-16, and 222-20 WAC.

Statutory Authority for Adoption: RCW 76.09.040.

Statute Being Implemented: RCW 76.09.050, 76.09.-060, 76.09.240, and 76.09.470.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Gretchen Robinson, 1111 Washington Street S.E., Olympia, (360) 902-1705; Implementation: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; and Enforcement: Donelle Mahan, 1111 Washington Street S.E., Olympia, (360) 902-1405.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business impact statement is not required because it does not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal is exempt from requirements in RCW 34.05.328 (5)(b)(iii) and (iv) because it incorporates state statutes without material change, corrects certain references to laws and rules, and clarifies language of rules without changing their effect.

August 15, 2012  
L. S. Young  
Chair

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

**WAC 222-08-032 Function, organization, and office.**

(1) The forest practices board was created by chapter 76.09 RCW to adopt forest practices rules as described in WAC 222-12-010.

(2) The board's membership as described in RCW 76.09.030(1), consists of thirteen members to include:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of ~~((community, trade, and economic development))~~ commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor so long as that member serves as an elected official;

(g) A member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(3) The governor-appointed members are appointed to four-year terms.

(4) The commissioner of public lands or designee shall chair the board.

(5) General public members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) Staff support is provided to the board as provided in RCW 76.09.030(6). Staff shall perform the following duties under the general authority and supervision of the board:

(a) Act as administrative arm of the board;

(b) Act as records officer to the board;

(c) Coordinate the policies and activities of the board; and

(d) Act as liaison between the board and other public agencies and stakeholders.

(7) The administrative office of the board is located at 1111 Washington Street S.E., Olympia, Washington. The board may sit or hold hearings anywhere in the state. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, except legal holidays and during board meetings. The board may be contacted at:

Forest Practices Board  
c/o Department of Natural Resources  
Forest Practices Division

P.O. Box 47012  
 Olympia, WA 98504-7012  
 Phone: 360-902-1400  
 Fax: 360-902-1428  
 E-mail: forest.practicesboard@dnr.wa.gov

(8) Any person may contact the board as indicated in subsection (7) of this section to obtain information on board activities.

**AMENDATORY SECTION** (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-12-035 \*Small forest landowner long-term applications.** In order to facilitate flexibility for small forest landowners in the timing of their forest practices activities, the department will receive, and approve or disapprove, long-term forest practices applications. Small forest landowners (~~(as defined in WAC 222-21-010(13))~~) are eligible to submit long-term applications unless proposing a conversion to a use other than commercial timber production. An approved long-term application will be effective for a term of ~~((three))~~ four to fifteen years at the discretion of the landowner. These applications may contain alternate plans for all or portions of the forest land area included in the long-term application. Alternate plan portions of long-term applications will be reviewed according to the alternate plan process described in WAC 222-12-0401. The process for small forest landowner long-term applications is described in WAC 222-20-016.

**AMENDATORY SECTION** (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-12-0401 \*Alternate plans—Process.** (1) Application. A landowner may submit an alternate plan that departs from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application. Alternate plans must be submitted with a ~~((two-year))~~ three-year, multiyear, or small forest landowner long-term application. Alternate plans may support a single forest practices application or multiple applications if the sites included in the plan have sufficient common physical characteristics and elements to justify being considered together. See board manual section 21.

(2) Plan preparation. The landowner is responsible for preparing and submitting an alternate plan. Small forest landowners may wish to seek the assistance of the small forest landowner office. See WAC 222-12-0402.

(3) Contents of alternate plans. Alternate plans must contain all of the following:

(a) A map of the area covered, at a scale acceptable to the department showing the location of any affected streams and other waters, wetlands, unstable slopes, and existing roads. The map must also show the location of proposed road construction, timber harvest, and other forest practices;

(b) A description of how the alternate plan provides public resource protection to meet the approval standard, including a description of the proposed alternate management strategy, prescriptions, and where applicable, aquatic resource enhancements;

(c) A list of the forest practices rules that the alternate management plan is intended to replace;

(d) Where applicable, descriptions of monitoring and adaptive management strategies, including landowner plans for annual performance reviews;

(e) Where applicable, descriptions of an implementation schedule; and

(f) When multiple forest practices applications are submitted with the same alternate plan or when an alternate plan has been used for previous applications, justification that the sites included in the plan share sufficient common physical characteristics and elements to be considered together.

(4) Review of proposed plan. Upon receipt of a forest practices application together with an alternate plan, the department will do all of the following:

(a) Appoint an interdisciplinary team((-));

(b) Establish a deadline for completion of the interdisciplinary team review that is consistent with the requirements of subsection (5) of this rule; and

(c) Within five business days of receipt of an application with an alternate plan, provide copies of the application and alternate plan to the departments of ecology and fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other parties that have expressed an interest in alternate plans in the area of the application. If the landowner is a small forest landowner (~~(under WAC 222-21-010(13))~~), copies should also be provided to the small forest landowners office.

(5) Interdisciplinary team.

(a) The department will determine the members invited to participate on an interdisciplinary team. Teams will include members with the qualifications necessary to evaluate the alternate plan. A representative of any affected Indian tribe, and departments of ecology and fish and wildlife will be invited to participate. Each team will include a representative of the landowner and a professional forester employed by the department and shall be led by a department employee.

(b) The interdisciplinary team will conduct a site visit and submit a recommendation to the department at least three days prior to the expiration of the application time limit in WAC 222-20-020. The interdisciplinary team may submit a recommendation without a site visit if a small forest landowner (~~(under WAC 222-21-010(13))~~) submitted the alternate plan using a template contained in board manual section 21 and is a low impact alternate plan and the team determines a visit is not necessary to evaluate the site specific application of a template or a low impact alternate plan.

(c) The recommendation of the interdisciplinary team shall indicate whether the alternate plan meets the approval standard, or what revisions are necessary to meet the approval standard. The team is intended to work with the landowner in an attempt to reach consensus on the efficacy of the alternate plan. In the absence of consensus, the team will forward reports reflecting the majority and minority opinions, or the landowner may elect to withdraw or revise the proposal.

(6) Approval standard. An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules.

(7) Approval, conditions, or disapproval. Upon receipt of the interdisciplinary team's recommendation, the department shall determine whether to approve, disapprove, or condition the application based on the approval standard. The department shall give substantial weight to the recommendations of the interdisciplinary team in cases where a consensus recommendation is forwarded. If the department disapproves or conditions a forest practices application with an alternate plan, the department will provide a written statement to the landowner explaining why the application was conditioned or denied.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-12-0402 \*Assistance available for small forest landowners.** (1) The small forest landowner office has been established within the department to be a resource and focal point for small forest landowner concerns and policies. ~~((A small forest landowner is defined in WAC 222-21-010(13).))~~ The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest landowner's economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature has directed that office to assist small forest landowners in preparing alternate plans appropriate to small forest landowners. See RCW 76.13.100 and 76.13.110(3).

(2) Small forest landowners interested in alternate plans are encouraged to contact the small forest landowner office for assistance in preparing an alternate plan. The office may provide technical assistance in understanding and using board manual section 21 for alternate plans, assistance in developing an individualized alternate plan for the small forest landowner and facilitation of small forest landowner interactions with the department, other state agencies, federal agencies, affected Indian tribes and the interdisciplinary team that may review the small forest landowner's alternate plan.

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

**WAC 222-16-010 \*General definitions.** Unless otherwise required by context, as used in these rules:

**"Act"** means the Forest Practices Act, chapter 76.09 RCW.

**"Affected Indian tribe"** means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

**"Alluvial fan"** see "sensitive sites" definition.

**"Appeals board"** means the pollution control hearings board established in RCW 43.21B.010.

**"Aquatic resources"** means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander

(*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

**"Area of resource sensitivity"** means areas identified in accordance with WAC 222-22-050 (2)(d), 222-22-060(2), or 222-22-090.

**"Bankfull depth"** means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

**"Bankfull width"** means:

(a) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - Line of mean high water.

(c) For tidal water - Line of mean high tide.

(d) For periodically inundated areas of associated wetlands - Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

**"Basal area"** means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

**"Bedrock hollows"** (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

**"Board"** means the forest practices board established by the act.

**"Bog"** means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

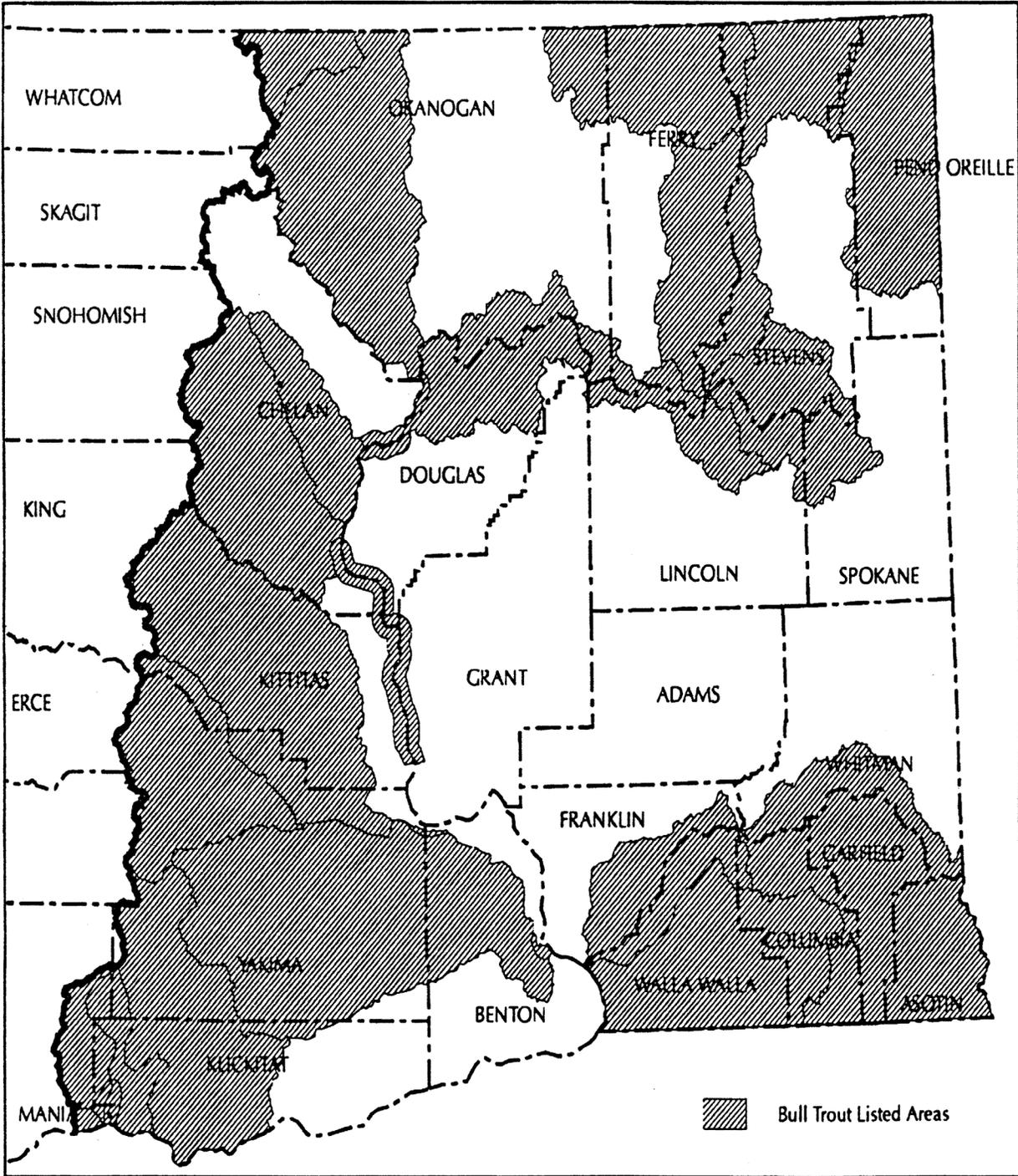
**"Borrow pit"** means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

**"Bull trout habitat overlay"** means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that

are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habi-

tat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and

associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See

board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

**"Chemicals"** means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

**"Clearcut"** means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Columbia River Gorge National Scenic Area or CRGNSA"** means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

**"CRGNSA special management area"** means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

**"CRGNSA special management area guidelines"** means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

**"Commercial tree species"** means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

**"Completion of harvest"** means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to

domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Convergent headwalls"** (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

**"Conversion activities"** means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** means a bona fide conversion to an active use which is incompatible with timber growing.

**"Cooperative habitat enhancement agreement (CHEA)"** see WAC 222-16-105.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

**"Critical habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Critical nesting season"** means for marbled murrelets - April 1 to August 31.

**"Cultural resources"** means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity"** means for marbled murrelets - One hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Date of receipt,"** as that term is defined in RCW 43.21B.001, means:

- (a) Five business days after the date of mailing; or

- (b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The

recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

**"Deep-seated landslides"** means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

**"Demographic support"** means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

**"Department"** means the department of natural resources.

**"Desired future condition (DFC)"** is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

**"Diameter at breast height (dbh)"** means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

**"Dispersal habitat"** see WAC 222-16-085(2).

**"Dispersal support"** means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

**"Drainage structure"** means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

**"Eastern Washington"** means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



**"Eastern Washington timber habitat types"** means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

**Timber Habitat Types**

- ponderosa pine
- mixed conifer

**Elevation Ranges**

- 0 - 2500 feet
- 2501 - 5000 feet

**Timber Habitat Types**

high elevation

**Elevation Ranges**

above 5000 feet

**"Edge"** of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Equipment limitation zone"** means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

**"Erodible soils"** means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Fen"** means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

**"Fertilizers"** means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

**"Fill"** means the placement of earth material or aggregate for road or landing construction or other similar activities.

**"Fish"** means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

**"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

**"Fish passage barrier"** means any artificial in-stream structure that impedes the free passage of fish.

**"Flood level - 100 year"** means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

**"Forest land"** means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

**"Forest landowner"** means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. ~~((The following definitions apply only to road maintenance and abandonment planning:~~

~~(1) "Large forest landowner" is a forest landowner who is not a small forest landowner.~~

~~(2) "Small forest landowner" is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:~~

~~• Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;~~

~~• Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;~~

~~• Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.~~

~~However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.)~~

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber or forest biomass, including but not limited to:

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

**"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

**"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Full bench road"** means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

**"Green recruitment trees"** means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

**"Ground water recharge areas for glacial deep-seated slides"** means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial

deposits. (See board manual section 16 for identification criteria.)

**"Headwater spring"** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

**"Herbicide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

**"Horizontal distance"** means the distance between two points measured at a zero percent slope.

**"Hyporheic"** means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

**"Identified watershed processes"** means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

**"Inner gorges"** means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

**"Insecticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

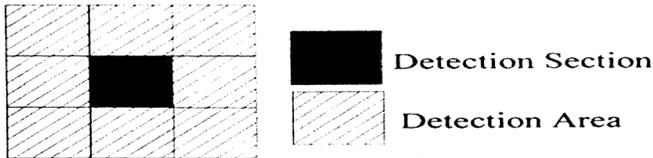
**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local governmental entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Marbled murrelet detection area"** means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



**"Marbled murrelet nesting platform"** means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

**"Median home range circle"** means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Multiyear permit"** means a permit to conduct forest practices which is effective for longer than ~~((two))~~ three years but no longer than five years.

**"Northern spotted owl site center"** means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - A male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - The presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - The presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in

year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Notice of a conversion to a nonforestry use"** means a notice issued by the department pursuant to RCW 76.09.060 (3)(b). A landowner who receives such notice is subject to the actions and requirements described in RCW 76.09.460 and 76.09.470.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

- (a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or
- (b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Old forest habitat"** see WAC 222-16-085 (1)(a).

**"Operator"** means any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Preferred tree species"** means the following species listed in descending order of priority for each timber habitat type:

<b>Ponderosa pine habitat type</b>	<b>Mixed conifer habitat type</b>
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

**"Public resources"** means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

**"Qualified surveyor"** means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

**"Riparian function"** includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

**"Riparian management zone (RMZ)"** means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-

full width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

**(2) For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

\* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"RMZ core zone"** means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

**"RMZ inner zone"** means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more

than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

**"RMZ outer zone"** means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

**"Road construction"** means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

**"Road maintenance"** means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

**"Salvage"** means the removal of snags, down logs, windthrow, or dead and dying material.

**"Scarification"** means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

**"Sensitive sites"** are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site class**" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"**Site preparation**" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"**Skid trail**" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"**Slash**" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"**Small forest landowner**" means an owner of forest land who, at the time of submission of required documentation to the department:

- Has harvested no more than an average timber volume of two million board feet per year from their own forest lands in Washington state during the three years prior to submitting required documentation; and
- Certifies they do not expect to exceed that average timber volume for ten years after the department receives the required documentation.

However, a landowner who exceeded or expects to exceed those harvest limits may still be deemed a small forest landowner under circumstances described in RCW 76.09.450.

"**Small forest landowner long-term application**" means a proposal from a small forest landowner to conduct forest practices activities for terms of ~~((three))~~ four to fifteen years. Small forest landowners ~~((as defined in WAC 222-21-010(13)))~~ are eligible to submit long-term applications if they meet the definition of "small forest landowner."

"**SOSEA goals**" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Spotted owl conservation advisory group**" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation. On an annual basis, beginning November 2010, the board will determine whether this group's function continues to be needed for spotted owl conservation.

**"Spotted owl dispersal habitat"** see WAC 222-16-085(2).

**"Spotted owl special emphasis areas (SOSEA)"** means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

**"Stop work order"** means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

**"Stream-adjacent parallel roads"** means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

**"Sub-mature habitat"** see WAC 222-16-085 (1)(b).

**"Suitable marbled murrelet habitat"** means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

- (a) Within 50 miles of marine waters;
- (b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;
- (c) Two or more nesting platforms per acre;
- (d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

**"Suitable spotted owl habitat"** see WAC 222-16-085(1).

**"Temporary road"** means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

**"Threaten public safety"** means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

**"Threatened or endangered species"** means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

**"Timber"** means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by

agricultural methods, as that term is defined in RCW 84.33-035.

**"Unconfined stream"** see WAC 222-23-010(2).

**"Validation,"** as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

**"Water bar"** means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

**"Watershed administrative unit (WAU)"** means an area shown on the map specified in WAC 222-22-020(1).

**"Watershed analysis"** means, for a given WAU, the resource assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-080 and shall include resource assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity and the ongoing reviews and reanalyses completed under WAC 222-22-090.

**"Weed"** is any plant which tends to overgrow or choke out more desirable vegetation.

**"Western Washington"** means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

**"Wetland"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

**"Wetland functions"** include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

**"Wetland management zone"** means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

**"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

**"Wildlife reserve trees"** means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evis-

dence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"**Windthrow**" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"**Yarding corridor**" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"**Young forest marginal habitat**" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

**WAC 222-16-050 \*Classes of forest practices.** There are four classes of forest practices created by the act. All forest practices (including those in Classes I and II) on nonfederal lands must be conducted in accordance with the forest practices rules. The department determines the classification of each forest practices proposal.

(1) "**Class IV((—))-special.**" Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

\*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local

governmental entity, except harvest of less than five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

\*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Groundwater recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports, review of approved watershed analysis mass wasting prescriptions according to WAC 222-22-090(6) or other information provided by the applicant.

(iii) An application would not be classified as Class IV-special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a watershed administrative unit (WAU) that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with approved prescriptions from the watershed analysis; and

(C) The applicable prescriptions are specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

\*(e) Timber harvest, in a ~~((watershed administrative unit))~~ WAU not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation; or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

\* (g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan).

\* (h) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV((—))-general."** Applications involving the following circumstances are ((<sup>(2)</sup>))Class IV((—))-general((<sup>(2)</sup>)) forest practices unless they are listed in ((<sup>(2)</sup>))Class IV((—))-special((<sup>(2)</sup>)) Forest practices applications classified Class IV-general are subject to the SEPA review process described in subsection (1) of this section.

(a) ~~((Forest practices other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;~~

~~((b))~~ Forest practices (other than those in Class I) on lands that ~~((have been or))~~ are being converted to another use;

~~((e))~~ (b) Forest practices ~~((which))~~ that would otherwise be Class III, but ~~((which))~~ are taking place on lands ~~((which))~~ that are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

~~((d))~~ (c) Where the regulatory authority for forest practices has not been transferred from the department to the local governmental entity pursuant to RCW 76.09.240(1), forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial ~~((forest products))~~ timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with ~~((the))~~ SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a ~~((license))~~ permit from a ~~((county/city))~~ local governmental entity acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable ~~((county/city))~~ local governmental entity under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the ~~((county/city))~~ local governmental entity is the lead agency for purposes of compliance with the SEPA.

(3) **"Class I."** ~~((These))~~ Operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in ~~((<sup>(2)</sup>))~~Class IV~~((—))~~-special~~((<sup>(2)</sup>))~~ are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

\* (b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

\* (c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\* (d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\* (e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

\* (f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

\* (n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty

percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\***(o)** Ground application of chemicals, if not within the CRGNSA special management area. ~~((f))~~ See WAC 222-38-020 and 222-38-030. ~~((g))~~

\***(p)** Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

**(q)** Forestry research studies and evaluation tests by an established research organization.

\***(r)** Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

**(i)** Any forest practices within the boundaries of existing golf courses.

**(ii)** Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

**(iii)** Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

**(s)** Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

**(4) "Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW ~~((77.55.100))~~ 77.55.021) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a ~~((Class II))~~ Class II ~~((Class II))~~ forest practice if it takes place on lands ~~((platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands))~~ that ~~((have been or))~~ are being converted to another use. Unless the conditions described in (f) or (g) of this subsection are met, no forest practice enumerated below involving timber harvest or road construction may be conducted as a ~~((Class II))~~ if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

**(a)** Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

**(b)** Renewal of a previously approved Class III or IV forest practices application where:

**(i)** No modification of the uncompleted operation is proposed;

**(ii)** No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application;

**(iii)** No change in the nature and extent of the forest practice is required under rules effective at the time of renewal; and

**(iv)** The application is not a multiyear permit that is located within an area subject to reanalysis of a watershed analysis under WAC 222-22-090(6).

\***(c)** Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

**(i)** Construction of advance fire trails.

**(ii)** Opening a new pit of, or extending an existing pit by, less than one acre.

\***(d)** Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent.

\***(e)** Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

**(i)** West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

**(ii)** East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

**(iii)** Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

**(iv)** Any harvest on less than forty acres.

**(v)** Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

\***(f)** Within urban growth areas designated pursuant to chapter 36.70A RCW, forest practices listed in (a) through (e) of this subsection may be Class II if the landowner provides the following:

**(i)** A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

\*(g) Within urban growth areas designated pursuant to chapter 36.70A RCW, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), forest practices listed in (a) through (e) of this subsection may nonetheless be Class II and regulated by the department, if:

(i) The proposed forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides:

(A) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(B) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

(5) "Class III." Forest practices not listed under Classes IV, I or II above are ((=))Class III((=)) forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW ((77.55.100)) 77.55.021).

\*(b) Those within the shorelines of the state other than those in a Class I forest practice.

\*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

\*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

\*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

\*(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over one acre.

\*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

\*(n) Any filling of wetlands, except where classified as Class IV forest practices.

\*(o) Multiyear permits.

\*(p) Small forest landowner long-term applications that are not classified Class IV((-)-special or Class IV((-)-general, or renewals of previously approved Class III or IV long-term applications.

\*(q) Within urban growth areas designated pursuant to chapter 36.70A RCW, forest practices listed in (a) through (p) of this subsection may be Class III if the landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

\*(r) Within urban growth areas designated pursuant to chapter 36.70A RCW, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), forest practices listed in (a) through (p) of this subsection may nonetheless be Class III and regulated by the department, if:

(i) The proposed forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides:

(A) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(B) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

**AMENDATORY SECTION** (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-20-010 Applications and notifications—Policy.** (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Except as provided in ((subpart)) subsection (4) ((below)) of this section, applications and notifications** shall be signed by the landowner, the timber owner and the

operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)).

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the** approved application or notification to a new landowner, timber owner or operator requires written notice by the former landowner or timber owner to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) **Applications and notifications**, if complete, will be considered officially received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. The department will immediately provide a dated receipt to the applicant. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the Columbia River Gorge National Scenic Area Act (CRGNSA) special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Ser-

vice received a complete plan application and failed to act within forty-five days.

(b) ~~((An))~~ A complete environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local governmental entity clearing and/or grading permit is necessary information for all Class IV applications on lands that ~~((have been or))~~ will be converted to a use other than commercial timber ~~((production or on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW.))~~ operations if the local governmental entity has jurisdiction and has an ordinance requiring such permit.

(d) A checklist road maintenance and abandonment plan is necessary information for all small forest landowners' applications or notifications for timber harvest (including salvage), unless exempt under WAC 222-24-0511, or unless the application is a small forest landowner long-term application which requires a roads assessment.

(8) **An operator's name**, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within forty-eight hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

(9) **Financial assurances** may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-20-015 Multiyear permits.** Landowners may apply for multiyear permits to conduct forest practices for four or five years in the following situations:

(1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080~~((;))~~ a landowner~~((;))~~ may apply for a multiyear permit. The information provided and level of detail for the application must be comparable to that required for a ~~((two-year))~~ three-year permit. At a minimum, the applications for these permits must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) ~~((A landowner with an approved))~~ Where a road maintenance and abandonment plan (other than a checklist~~((;))~~ road maintenance and abandonment plan) has been approved under WAC 222-24-051, a landowner may apply for a multiyear permit to perform road maintenance, road abandonment, and/or associated right of way timber harvest, if the schedule for implementing the plan is longer than ~~((two))~~ three years.

(3) Where an alternate plan has been approved under WAC 222-12-0401, a landowner may apply for a multiyear permit to perform ~~(an approved)~~ the activities in the alternate plan.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-20-016 Small forest landowner long-term applications.** (1) **Application.** A small forest landowner may submit a forest practices application that includes planned forest practices activities on all or part of a landowner's ownership within one of the department's geographic region boundaries. The application can be for terms of ~~((three))~~ four to fifteen years at the discretion of the landowner. The landowner will submit the application to the department in two steps.

(2) **Review of proposed application.**

(a) **Step 1: Resource and roads assessment review.** The landowner will submit the resource and roads assessment portion of the application. As part of the review, the department will determine any additional known resources or threats to public safety and initiate one or more site reviews in consultation with the department of ecology, the department of fish and wildlife, and the affected Indian tribes. The department will notify the landowner and the landowner's representative to attend the site review(s). Within forty-five days of receiving the complete assessment, the department will notify the landowner in writing of its validation or rejection of the assessment. If rejected, the department will provide a written statement to the landowner explaining why the assessment was rejected.

(b) **Step 2: Resource protection strategies review.** The department will accept for review the resource protection strategies portion of the long-term application after the department validates Step 1. The required elements of Step 2 will include a description of proposed forest practices activities and strategies for protection of all resources identified in Step 1. The department will approve, condition, or disapprove Step 2 within forty-five days of receiving the complete Step 2 portion, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required. If disapproved, the department will provide a written statement to the landowner explaining why the proposed strategies were disapproved.

(3) **Activity notice.** At least five business days before a landowner starts an approved forest practices activity the landowner will submit to the department an activity notice in a format acceptable to the department.

(4) **Amendments to long-term applications.**

(a) The department may authorize nonsubstantial amendments as authorized in WAC 222-20-060.

(b) If the board considers new or amended rules to achieve resource protection objectives, the department and the board will do the following regarding existing approved long-term applications:

(i) The department, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes will review, and if necessary analyze the effects of approved long-

term applications on the public resources the proposed rules are intended to protect.

(ii) The department will report the results of its review and/or analysis to the board prior to rule adoption.

(iii) Upon rule adoption, the board may direct the department to condition existing approved long-term applications to protect resources.

(iv) The department will notify impacted landowners in writing of the board's decision.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-20-020 Application time limits.** (1) **When the department officially receives an application,** the department will approve, condition or disapprove it within thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For ~~((Class IV))~~ applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ten days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in ~~((i))~~ ~~((through (iv)))~~, (ii) or (iii) of this subsection, the applicable time limit shall be no less than fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) ~~((Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;~~

~~((ii)))~~ Lands that ~~((have been or))~~ are being converted to another use;

~~((iii)))~~ (ii) Lands ~~((which are))~~ that will not ~~((to))~~ be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and ~~((222-24-050))~~ 222-20-050); or

~~((iv)))~~ (iii) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(e) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016.

The department will review Step 1 and issue a decision within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

~~(2) ((Unless the local governmental entity has waived its rights under the act or consents to approval, the department shall not approve an application involving lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands that have been or are being converted to another use until at least fourteen business days from the date of transmittal to the local governmental entity.~~

~~(3))~~ **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided, That no damage to a public resource resulted from such operations, and the operations commenced more than five days from receipt by the department of the notification.

~~((4))~~ **(3) If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application involves lands ~~((platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands))~~ that ~~((have been or))~~ are being converted to a use other than commercial timber operations where the ~~((county's))~~ local governmental entity's right of objection is fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

~~((5))~~ **(4) If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-20-040 Approval conditions.** (1) **Whenever an approved** application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent addi-

tional requirements set forth in a stop work order or a notice to comply.

**(3) Local governmental entity conditions—Class IV—general applications.**

(a) RCW 76.09.240~~((4))~~ ~~(6)~~ allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to ~~((Class IV general))~~ applications on lands that ~~((have been or))~~ are being converted to a use other than commercial timber ~~((production or to Class IV general applications on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW))~~ operations.

(c) After determining that an application is Class IV-general, the department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) The local governmental entity ~~((conditions))~~ shall ~~((be filed))~~ file its conditions with the department within twenty-nine days of the department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

**(4) Lead agency mitigation measures.**

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters

76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under the State Environmental Policy Act. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of twenty-nine days of the official receipt of the application by the department, fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must disapprove the application or require an environmental impact statement. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall disapprove the application.

(5) **Small forest landowner approval conditions.** The department shall not disapprove a small forest landowner's application or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

(a) Any barriers on their forest roads located within the boundaries of their application or notification; and

(b) Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application or notification.

**(6) CRGNSA special management area.**

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special man-

agement area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on conditioning an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 10-23-077, filed 11/15/10, effective 12/16/10)

**WAC 222-20-050 Conversion of forest land to non-forest use.** (1) If an application to harvest signed by the landowner indicates that within three years after completion, the forest land will be converted to a specified active use (~~(which)~~ that is incompatible with a use other than commercial timber (~~(growing)~~ operations), the reforestation requirements of (~~these rules~~) chapter 222-34 WAC shall not apply, and the information relating to reforestation on the application form need not be supplied. However, if (~~such~~) the specified active use is not initiated within three years after (~~such~~) the harvest is completed, the reforestation requirements (~~(see chapter 222-34 WAC)~~) shall apply and (~~such~~) reforestation shall be completed within one additional year.

(2) (~~For Class II, III, and IV special forest practices, if a landowner wishes to maintain the option for conversion to a use other than commercial timber growing, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan. This plan, if approved by the local governmental entity and followed by the landowner, shall release the landowner from the six-year moratorium on future development, but does not create any other rights. The conversion option harvest plan shall be attached to the application or notification as a condition. Violation of the conversion option harvest plan will result in the reinstatement of the local governmental entity's right to the six-year moratorium. Reforestation requirements will not be waived in the conversion option harvest plan. Reforestation rules shall apply at the completion of the harvest operation as required in chapter 222-34 WAC. Nothing herein shall preclude the local governmental entity from charging a fee to approve such a plan. (See RCW 76.09.060 (3)(b)(i).)~~)

(3) ~~If the application or notification does not state that any land covered by the application or notification will be or~~

is intended to be converted to a specified active use incompatible with commercial timber growing, or if the forest practice takes place without a required application or notification, then the provisions of RCW 76.09.060 (3)(b)(i) regarding the six-year moratorium apply.

(4) A notice of a conversion to a nonforestry use issued by the department under the provisions of RCW 76.09.060 (3)(b) may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.) If a landowner who did not state an intent to convert decides to convert to a nonforestry use within six years of receiving an approved forest practices application or notification, the landowner must:

(a) Stop all forest practices activities on the parcels subject to conversion;

(b) Contact the department of ecology and the applicable local governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any related applications or notifications, or request a new application for conversion.

Upon request from the local governmental entity, the department will provide the status of the landowner's related applications and notifications, and any final orders or decisions.

#### NEW SECTION

##### **WAC 222-20-051 Conversion option harvest plans.**

(1) For Class II, III, and IV-special forest practices, if a landowner wishes to maintain the option to convert forest land to a use other than commercial timber operations, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan.

(2) If a local governmental entity approves a plan, the landowner must attach it to the forest practices application or notification.

(3) The plan will be a condition of the approved application or notification.

(4) Violation of the plan will result in the development prohibitions or the conditions described in RCW 76.09.460.

(5) Reforestation requirements will not be waived regardless of the existence of a conversion option harvest plan.

#### NEW SECTION

**WAC 222-20-052 Notice of conversion to nonforestry use.** (1) Under the provisions of RCW 76.09.060 (3)(b), if harvest takes place without an approved application or notification, or the landowner did not state that any land covered by the application or notification is intended to be converted to a use other than commercial timber operations, then the department and the appropriate local governmental entity will follow the process described in subsections (2) and (3) of this section.

(2) When the department or local governmental entity becomes aware of conversion activities the department will send to the department of ecology and the appropriate local governmental entities the following documents:

(a) A notice of conversion to nonforestry use;

(b) A copy of the applicable forest practices application or notification, if any; and

(c) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(3) When a local governmental entity receives a notice of conversion to a nonforestry use from the department, it will follow the requirements of RCW 76.09.460.

(4) A notice of a conversion to a nonforestry use issued by the department under the provisions of RCW 76.09.060 (3)(b) and this section may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

**WAC 222-20-080 Application and notification expiration.** (1) The approval given by the department to an application to conduct a forest practice shall be effective for a term of ~~((two))~~ three years from the date of approval, with the following exceptions:

(a) Multiyear permits are effective for ~~((three to))~~ four or five years.

(b) Small forest landowner long-term applications are effective for terms of ~~((three))~~ four to fifteen years.

(2) A notification is effective for a term of ~~((two))~~ three years beginning five days from the date it is officially received.

(3) An application or notification may be renewed for one additional three-year term by submitting a renewal in a form acceptable to the department.

#### **WSR 12-17-156**

#### **PROPOSED RULES**

#### **DEPARTMENT OF EARLY LEARNING**

[Filed August 22, 2012, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-02-059.

Title of Rule and Other Identifying Information: Chapter 170-295 WAC, Minimum licensing requirements for child care centers.

Hearing Location(s): Department of Early Learning (DEL), 1110 Jefferson Street S.E., Olympia, WA 98501, on September 28, 2012, at 1:00 p.m. - 2:30 p.m.

Date of Intended Adoption: October 29, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail [Rules@del.wa.gov](mailto:Rules@del.wa.gov), fax (360) 586-0533, by September 26, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 23, 2012, (360) 725-4421.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recent United States Consumer Product Safety Commission (CPSC) rules require child care facilities nationwide to use only cribs that meet 2010 testing and design requirements of American Society for Testing and Materials standard F1169-10 for full-size cribs, or standard F406-10a for nonfull-size cribs. See Federal Register Volume 75, Number 248, pages 81765-81788. Child care facilities have until December 28, 2012, to replace cribs that do not meet the federal standards.

Reasons Supporting Proposal: Anyone who is covered by the new crib standards and does not comply commits a prohibited act under section 19 (a)(1) of the Consumer Product Safety Act (CPSA). A person or company that knowingly commits a prohibited act is subject to possible civil penalties.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Statute Being Implemented: 16 C.F.R. Parts 1219, 1220, 1500, et al.

Rule is necessary because of federal law, 16 C.F.R. Parts 1219, 1220, 1500, et al.

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Child Care Administration, state office, (360) 725-4692; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is being adopted solely for the purpose of conformity or compliance, or both, with federal statute or regulations 16 C.F.R. Parts 1219, 1220, 1500, et al. CPSC rules require child care facilities nationwide to use only cribs that meet 2010 testing and design requirements of American Society for Testing and Materials standard F1169-10 for full-size cribs, or standard F406-10a for nonfull-size cribs. See Federal Register Volume 75, Number 248, pages 81765-81788.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

August 21, 2012  
Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 06-15-075 filed 7/13/06, effective 7/13/06)

**WAC 170-295-4100 What sleep equipment do I need for infants?** (1) You must not put infants to sleep in infant or car seats.

(2) You must provide each infant with a single-level crib (stacking cribs must not be used), infant bed, bassinet or playpen for napping until you and the parent agree that the child can safely use a mat, cot or other approved sleeping equipment.

(3) ~~((Cribs, if used, must:~~

~~(a) Be sturdy and made of wood, metal or plastic with a secure latching device;~~

~~(b) Be constructed with vertical slats that are no more than two and three-eighths inches apart or be solid plexiglas;~~

~~(c) Have corner posts that extend less than one-sixteenth of an inch above the sides and railing;~~

~~(d) Not have cutout designs on the end panels;~~

~~(e) Have a rail height and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position of at least nine inches;~~

~~(f) Have a rail height and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position of at least twenty-six inches; and~~

~~(g) Not use crib bumper pads, stuffed toys, quilts, lamb skins, and pillows in cribs, infant beds, bassinets or playpens.)~~ Effective December 28, 2012, each crib in use in licensed child care must meet U.S. Consumer Product Safety Commission (CPSC) requirements for full size cribs as defined in 16 Code of Federal Regulations (C.F.R.) 1219, or nonfull size cribs as defined in 16 C.F.R. 1220.

(a) A crib meets the requirements of this subsection if the crib is labeled by the manufacturer as made on or after June 28, 2011.

(b) A crib labeled as made from July 1, 2010, through June 27, 2011, may meet the requirements of this subsection if the licensee has obtained a certificate of compliance from the crib manufacturer or importer, or the licensee has other documentation from the manufacturer that the crib is certified as meeting the CPSC regulations.

(c) Any crib that does not meet the requirements of subsection (a) or (b) of this subsection must be removed from the child care facility not later than December 28, 2012.

(d) The licensee must keep in the licensed space a log documenting that each crib in use meets the requirements of this section.

(4) You must provide a crib, infant bed, playpen or bassinet mattress that is:

(a) Snug fitting and touches each side of the crib to prevent the infant from becoming entrapped between the mattress and crib side rails;

(b) Waterproof; and

(c) Easily cleaned and sanitized, without tears or tape.

(5) To allow walking room between cribs and reduce the spread of germs you must:

(a) Space cribs a minimum of thirty inches apart. You may place cribs end to end if you provide a barrier. If you use barriers, staff must be able to observe and have immediate access to each child.

(b) Provide a moisture resistant and easily cleanable solid barrier on the side or end adjacent to another crib.

(6) You must provide:

(a) An appropriate fitting sheet or cover for the sleeping surface; and

(b) A clean light weight blanket or suitable cover for the child.

(7) You must launder bedding at least weekly and more often if it becomes soiled.

**WSR 12-17-157**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed August 22, 2012, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-13-059.

Title of Rule and Other Identifying Information: Chapter 170-290 WAC.

Hearing Location(s): Department of Early Learning (DEL), Tacoma office, Room 195, 1949 South State Street, Tacoma, WA 98405, on Tuesday, September 25, 2012, at 5:00 p.m.; and at the Northeast Washington Educational Services District 101, 4202 South Regal Street, Spokane, WA 99223, on Wednesday, September 26, 2012, at 5:00 p.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing:

**The deadline for sending written comments on the proposed rules is midnight on Wednesday, September 26, 2012.** See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a concise explanatory statement. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than September 25, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 586-0533, by September 26, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 24, 2012, (360) 725-4421.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement certain bills enacted by the 2012 legislature and signed by the governor:

- Regarding raising the cutoff of eligibility for working connections child care (WCCC) subsidies from one hundred seventy-five percent of the federal poverty level, to two hundred percent of the federal poverty level.

- Regarding increasing the authorization period for WCCC from six months to twelve months.

To make technical corrections and streamline language regarding child support and the Basic Food employment and training (BFET) program.

Reasons Supporting Proposal: DEL has been directed by the legislature to enact these changes as part of implementing SB 6226 and 3ESHB 2127. Additional corrections are being made regarding child support and the BFET for the welfare of the general public.

Statutory Authority for Adoption: RCW 43.215.060, and 43.215.070; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, DEL, Olympia, Washington, (360) 725-2629; Implementation: DSHS Field Offices and Call [Centers], statewide; and Enforcement: DSHS Field Offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to create new costs for child care businesses that would be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

August 21, 2012  
 Elizabeth M. Hyde  
 Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

**WAC 170-290-0005 Eligibility.** (1) **Parents.** To be eligible for WCCC, the person applying for benefits must:

- (a) Have parental control of one or more eligible children;
- (b) Live in the state of Washington;
- (c) Be the child's:
  - (i) Parent, either biological or adopted;
  - (ii) Stepparent;
  - (iii) Legal guardian verified by a legal or court document;
  - (iv) Adult sibling or step-sibling;
  - (v) Nephew or niece;
  - (vi) Aunt;
  - (vii) Uncle;
  - (viii) Grandparent;
  - (ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or
  - (x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;
- (d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below ~~((one))~~ two hundred ~~((seventy-five))~~ percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than ~~((one))~~ two hundred ~~((seventy-five))~~ percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) Live in Washington state, and be:

(i) Less than age thirteen; or

(ii) Less than age nineteen, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0012 Verifying consumers' information.** (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits; or

(b) The consumer reapplies for benefits.

(2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.

(3) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) A current WorkFirst IRP for consumers receiving TANF;

(b) Employer name, address, and phone number;

(c) State business registration and license, if self-employed;

(d) Work, school, or training schedule (when requesting child care for non-TANF activities);

(e) Hourly wage or salary;

(f) Either the:

(i) Gross income for the last three months;

(ii) Federal income tax return for the preceding calendar year; or

(iii) DSHS employment verification form;

(g) Monthly unearned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;

(h) If the other parent is in the household, the same information for them;

(i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(j) ~~((Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;~~

~~((k)))~~ Name and phone number of the licensed child care provider; and

~~((H))~~ ~~((k))~~ For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed providers' valid Social Security card; and

(iv) All other information required by WAC 170-290-0135.

(6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

(8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0031 Notification of changes.** When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify DSHS, within five days, of any change in providers;

(2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;

(3) Notify DSHS within ten days of any significant change ~~((m))~~ related to the consumer's copayment or eligibility, including:

(a) The number of child care hours the consumer needs (more or less hours);

(b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The consumer's household size such as any family member moving in or out of his or her home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of the consumer's in-home/relative provider;

(f) The consumer's home address and telephone number; and

(g) The consumer's legal obligation to pay child support;

(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and

(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

**AMENDATORY SECTION** (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

**WAC 170-290-0075 Determining income eligibility and copayment amounts.** (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

(a) Determine the consumer's family size (under WAC 170-290-0015); and

(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$50
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$50
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) Effective February 1, 2011, through February 28, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$60
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) ~~((On or after))~~ Effective March 1, 2011, through June 30, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding \$65
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(5) On or after July 1, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding \$65.
(d) Above 200% of the FPG, a consumer is not eligible for WCCC benefits.	

(6) DSHS does not prorate the copayment when a consumer uses care for part of a month.

~~((6))~~ (7) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

**AMENDATORY SECTION** (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

**WAC 170-290-0082 Eligibility period.** (1) ~~((Six-month eligibility.~~

~~((a)))~~ (a) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for ~~((six))~~ twelve months before having to redetermine his or

her income eligibility ~~(, except as provided in subsection (2) of this section).~~ The ~~((six-month))~~ twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

~~((b))~~ (2) A consumer's eligibility may be for less than ~~((six))~~ twelve months if:

~~((i))~~ (a) Requested by the consumer; or

~~((ii))~~ (b) A TANF consumer's individual responsibility plan indicates child care is needed for less than ~~((six))~~ twelve months.

~~((c))~~ (3) A consumer's eligibility may end sooner than ~~((six))~~ twelve months if:

~~((i))~~ (a) The consumer no longer wishes to participate in WCCC; or

~~((ii))~~ (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

~~((2))~~ **Twelve-month eligibility.**

~~(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.~~

~~(b) A consumer's eligibility may be for less than twelve months if:~~

~~(i) Requested by the consumer; or~~

~~(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.~~

~~(c) The consumer's eligibility may end sooner than twelve months if:~~

~~(i) The consumer no longer wishes to participate in WCCC; or~~

~~(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.~~

~~((d))~~ (4) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

~~((e))~~ (5) The twelve-month eligibility period begins:

~~((i(A)))~~ (a) When benefits begin under WAC 170-290-0095; or

~~((B))~~ (b) Upon reapplication under WAC 170-290-0109(4); and

~~(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.~~

~~(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.~~

~~(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.~~

~~(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research~~

~~and data center, or both, to measure the child's educational progress from preschool through grade twelve).~~

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$28.53	\$23.99	\$22.67	\$21.34
	Half-Day	\$14.28	\$12.00	\$11.34	\$10.67
Spokane County	Full-Day	\$29.18	\$24.54	\$23.19	\$21.83
	Half-Day	\$14.61	\$12.28	\$11.61	\$10.91
Region 2	Full-Day	\$28.81	\$24.05	\$22.30	\$19.73
	Half-Day	\$14.41	\$12.03	\$11.15	\$9.88
Region 3	Full-Day	\$38.13	\$31.79	\$27.46	\$26.67
	Half-Day	\$19.07	\$15.89	\$13.73	\$13.34
Region 4	Full-Day	\$44.38	\$37.06	\$31.09	\$28.00
	Half-Day	\$22.63	\$18.54	\$15.55	\$14.00
Region 5	Full-Day	\$32.54	\$28.00	\$24.65	\$21.88
	Half-Day	\$16.26	\$14.00	\$12.32	\$10.95
Region 6	Full-Day	\$31.99	\$27.46	\$23.99	\$23.46
	Half-Day	\$16.01	\$13.73	\$12.00	\$11.74

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five ~~((to))~~ through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - <del>(4+)</del> 12 yrs)
Region 1	Full-Day	\$24.29	\$24.29	\$21.12	\$21.12	\$18.78
	Half-Day	\$12.14	\$12.14	\$10.56	\$10.56	\$9.39
Spokane County	Full-Day	\$24.84	\$24.84	\$21.60	\$21.60	\$19.21
	Half-Day	\$12.42	\$12.42	\$10.80	\$10.80	\$9.60
Region 2	Full-Day	\$25.65	\$25.65	\$22.30	\$19.95	\$19.95
	Half-Day	\$12.82	\$12.82	\$11.15	\$9.97	\$9.97
Region 3	Full-Day	\$34.03	\$34.03	\$29.33	\$25.81	\$23.46
	Half-Day	\$17.02	\$17.02	\$14.67	\$12.91	\$11.74
Region 4	Full-Day	\$40.04	\$40.04	\$34.81	\$29.33	\$28.16
	Half-Day	\$20.03	\$20.03	\$17.42	\$14.67	\$14.08
Region 5	Full-Day	\$26.99	\$26.99	\$23.46	\$22.30	\$19.95
	Half-Day	\$13.50	\$13.50	\$11.74	\$11.15	\$9.97
Region 6	Full-Day	\$26.99	\$26.99	\$23.46	\$23.46	\$22.30
	Half-Day	\$13.50	\$13.50	\$11.74	\$11.74	\$11.15

(2) The family home child care WAC (~~(170-296-0020)~~ 170-296A-0010 and (~~(170-296-1350)~~ 170-296A-5550) allows providers to care for children from birth up to and including the day before their (~~(twelfth)~~ thirteenth) birthday. (~~(The provider must obtain a child-specific and time-limited exception from their child care licensur to provide care for a child outside the age listed on their license. If the provider has an exception to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.)~~)

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five (~~(to eleven)~~) through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps.** (1) In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

- (a) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

- (i) Centers in Clark County are paid Region 3 rates;
- (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour; or

(c) **Level 3.** A rate that exceeds \$15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

- (a) Be at least eighteen years of age; and
- (b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

- (a) Is thirteen years or older; and
- (b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five (~~(to)~~) through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers.** (1) In addition to the base rate for licensed or certified family home

child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - <del>(11)</del> ) 12 yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour; or

(c) **Level 3.** A rate that exceeds \$15.89 per hour.

(2) If the provider has an exception to care for a child who:

(a) Is ~~(twelve)~~ thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five ~~(to eleven)~~ through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

(a) Be at least eighteen years old; and

(b) Meet the requirements for being an assistant under chapter ~~(170-296)~~ 170-296A WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

**AMENDATORY SECTION** (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0045 Approved activities for consumers not participating in WorkFirst.** This section applies to applicants and consumers of WCCC who do not participate in WorkFirst activities:

(1) **General requirements for employment ~~(or)~~, self-employment, or Basic Food employment and training (BF E&T) program.** He or she may be eligible for WCCC benefits for up to a maximum of sixteen hours per day, including travel, study, and sleep time before or after a night shift, when he or she is:

(a) Employed under WAC 170-290-0003; ~~(or)~~

(b) Self-employed under WAC 170-290-0003; or

(c) Participating in the BF E&T program under chapter 388-444 WAC.

(2) **Special requirements for education ~~(and training)~~.**

(a) An applicant or consumer who is under twenty-two years of age may be eligible for WCCC benefits for high

school (HS) or general educational development (GED) program without a minimum number of employment hours.

(b) An applicant or consumer who is twenty-two years of age or older:

(i) May be eligible to receive the benefits under this subsection only once during his or her lifetime. In order to qualify for the general education and training benefits under this subsection, he or she must work either:

(A) Twenty or more hours per week of unsubsidized employment; or

(B) Sixteen or more hours per week in a paid federal or state work study program;

(ii) Is limited to up to twenty-four consecutive months of WCCC benefits for participation in:

(A) Adult basic education (ABE);

(B) English as a second language (ESL); or

(C) High school/general educational development (GED) completion; ~~(or~~

~~(D) Food stamp employment and training program under chapter 388-444 WAC;))~~ and

(iii) Is limited to up to thirty-six consecutive months of WCCC benefits for participation in vocational education (Voc Ed). The vocational education program must lead to a degree or certificate in a specific occupation and be offered by the following accredited entities only:

(A) Public and private technical college or school;

(B) Community college; or

(C) Tribal college.

**AMENDATORY SECTION** (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0060 Countable income.** DSHS counts income as money an applicant or consumer earns or receives from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) The following child support payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;~~(;~~

~~(c) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply).~~

(3) Supplemental security income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation;

(8) Other types of income not listed in WAC 170-290-0070;

(9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;

(10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable;

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

### WSR 12-17-159

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed August 22, 2012, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-122.

Title of Rule and Other Identifying Information: The department of agriculture (DOA) is proposing an amendment to chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards, and fees.

Hearing Location(s): Spokane County Cooperative Extension, 222 North Havana, Room F, Spokane, WA 99202, on October 8, 2012, at 10:00 a.m.; and at the Natural Resources Building, 1111 Washington Street S.E., Room 175 A&V, Olympia, WA 98504, on October 1, 2012, at 10:00 a.m.

Date of Intended Adoption: October 17, 2012.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDA RuleComments@agr.wa.gov, fax (360) 902-2085, by 5:00 p.m., October 8, 2012.

Assistance for Persons with Disabilities: Contact WSDA agency receptionist by calling TTY 1-800-822-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to ensure that the fees charged can build and maintain a reserve of six months of operating costs for the grain inspection program.

Reasons Supporting Proposal: Fees for the grain inspection program have not been increased since 2005. Since that time the operational costs have increased dramatically. It is necessary to increase the fees to fully cover these costs.

Statutory Authority for Adoption: RCW 22.09.020(13), 22.09.790, chapter 34.05 RCW; 3ESHB 2127, chapter 7, Laws of 2012.

Statute Being Implemented: Chapter 22.09 RCW, Agricultural commodities.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Keith Angerman, Acting Grain Program Manager, Regional Offices, Tacoma, (253) 593-2064.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** DOA's grain inspection program is proposing to amend chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards, and fees.

The purpose of this chapter is to establish a schedule of fees for services provided by the grain inspection program. User fees fund the grain inspection program as set forth in the rules. The fees established in this chapter are to be set at a level that will ensure full cost recovery for services rendered.

The proposed amendments to this chapter include:

- Combination inspection and weighing services increased from \$0.20 to \$0.26 per metric ton.
- Inspection of bagged commodities increased from \$0.080 to \$0.100 per hundredweight.
- Sample pick-up fee on department-established routes increased from \$0.85 to \$1.25.
- Official analysis for protein, oil or other official constituents increased from \$7 to \$9.
- Submitted sample inspection increased from \$9 to \$12.
- Falling number determinations, including liquefaction numbers, increased from \$15 to \$20.
- Trucks or containers sampled by USDA-approved grain probes increased from \$17 to \$20.
- Inspection of trucks or containers increased from \$22 to \$25.
- Grain straight-time service rate increased from \$30 to \$56 per employee.
- Vessels/barges stowage examination, original/reinspection increased from \$300 to \$500.

All other proposed fee increases were set on an individual basis taking into account the potential impact on small businesses and the frequency of fee use. The intent of the proposed rule is to raise fees across the board in a fair and consistent manner, fully recover costs, and maintain a minimum of a six-month operating fund balance.

One proposed change includes the process for determining revenue minimum. If the actual volume of work at the established fees does not generate revenue equivalent to the straight time service rate per hour, per employee the customer is responsible for the difference. The customer has the option to select a daily or monthly averaging under the existing rules. This proposal includes a change to allow only weekly

averaging. This change affects those companies that request on-site, prescheduled service and usually applies to larger export offices. However, if a small company requests on-site, prescheduled service weekly averaging would apply.

A significant proposed change is removal of the tier discount system. This process was a solution implemented at the last fee rule revision to reduce an operating fund balance that had become excessive. A mechanism was not included at that time to discontinue the adjustment once the fund returned to an appropriate level. This has contributed to an accelerated reduction of the fund balance. Currently, the fund is about one-half of the six-month operating balance needed.

The proposal includes a new section to prevent a fund balance from increasing significantly higher than a six-month operating reserve. If the fund balance increases to more than five percent beyond the minimum operating reserve, customers will receive a monthly discount that is distributed over a calendar year.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS):** Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs on businesses.

"Minor cost" means a cost that is less than one percent of annual payroll or the greater of either 0.3 percent of annual revenue or \$100.

"Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

**INDUSTRY ANALYSIS:** The proposed rule affects both large and small businesses that pay hourly service rates or unit fees. The grain trade serviced by the grain inspection program consists of exporters, transloaders, inland elevators and cooperatives, and stevedoring firms. These businesses fall under the following North American Industry Classification System (NAICS) codes:

- *NAICS 111191 Oilseed and Grain Combination Farming*, grain and oilseed producers.
- *NAICS 424510 Grain and Field Bean Merchant Wholesalers*, exporters, transloaders, and country or terminal grain elevators.
- *NAICS 488510 Freight Transportation Arrangement*, shipping agents.

The department has analyzed the proposed rule amendments and has determined that costs are more than minor on regulated businesses.

**INVOLVEMENT OF SMALL BUSINESSES:** The grain inspection program mailed a small business economic impact survey to five hundred six customers and received sixty-one survey responses over a fourteen day period. Fifty-three responses were from small businesses; eight responses were from large businesses. The grain program has also met with a number of large and small business industry representatives. The program will continue to provide information and obtain input from industry on the proposed rule. Public hearings are scheduled for early October.

**COST OF COMPLIANCE:** RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs. Agencies must also consider whether compliance with the rule will result in loss of sales or revenue. RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules. Agencies are to use one or more of the following as a basis for comparing costs:

- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

*Analysis of Cost of Compliance:* The grain inspection program analyzed the anticipated cost of compliance for regulated small businesses. Sixty-eight percent (thirty-six) of the small businesses that responded indicated that the proposed fee increases would have an impact. These small businesses responded to the following questions:

- How many employees does your business employ on a full-time, year-around basis?
- Will the business need to create jobs if the fee increases are implemented? If so, how many?
- Will the business need to eliminate jobs if the fee increases are implemented? If so, how many?
- If the increases in the fees are implemented, will it cause your business to lose sales or revenue? If yes, how much revenue will be lost?
- Will your business incur additional costs to comply with increased inspection rates? Compliance costs to be considered are equipment, supplies, labor and increased administration costs, new or professional services. If yes, how much do you estimate the additional compliance costs to be per \$100 of sales?

An analysis of the survey responses indicated there would not be any jobs added because of the fee increases. Four percent of small business responses, from two small businesses, indicated that one job (each) might be lost resulting from the loss of revenue due to the fee increases.

Small businesses indicated estimated costs for compliance in differing ways. Some businesses responded that costs for compliance with the proposed rule would be \$0.25 to \$18.25 per \$100 of sales. Other small businesses responded that annual costs for compliance would be between \$2,000 and \$20,000 overall. One small business estimated compliance costs as "minimal," between \$0.02 and \$0.03 per bushel of grain. The majority of small businesses that responded, seventy-five percent, indicated they would not incur additional costs or that they would pass on the additional costs to their customers. Thirty-eight percent of small businesses responded that they would incur a loss in sales or revenue due to increased fees.

*Analysis of Disproportionate Economic Impact:* When costs associated with proposed rules are more than minor, the Regulatory Fairness Act requires a comparison of the costs to

small businesses with those of ten percent of the largest businesses in the regulated industry. The costs small businesses will incur to comply with the proposed rules are more than minor, but not disproportionately weighted toward small businesses.

Historically, the revenue generated from the inland elevators that are primarily small businesses, has not covered the costs of the program services provided them. The larger export companies pay a greater proportion of overall fees which helps sustain the program's ability to provide service to the state's grain industry as a whole.

**JOBS CREATED OR LOST:** Responses from small businesses to WSDA's small business economic impact survey indicate that there will not be any jobs added because of the fee increases. Four percent of small business responses, or two small businesses, indicated that one job (each) might be lost due to the fee increase.

**CONCLUSION:** The grain inspection program has analyzed the economic impact of the proposed rules on small businesses and has concluded that the costs small businesses will incur to comply with the proposed rules are more than minor, but not disproportionately weighted toward small businesses.

One proposed change in particular would positively affect small businesses compared to the existing fee structure. Currently, the tier system discount reduces the fund by offering volume discounts. This essentially limits the return of excess fees to the largest companies by volume. The new section proposes every company participate in future fee discounts based on the percentage of fees previously paid to the department.

Please contact Keith Angerman, Acting Grain Program Manager, Regional Offices, if you have any questions at kangerman@agr.wa.gov or at (253) 593-2064.

A copy of the statement may be obtained by contacting Keith Angerman, Acting Grain Program Manager, Regional Offices, 11 Schuster Parkway, Tacoma, WA 98402, phone (253) 593-2064, fax (360) 902-2085, e-mail kangerman@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. DOA is not a listed agency in RCW 34.05.328 (5)(a)(i).

August 22, 2012  
Brad J. Avy  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-010 Definitions. "Department"** means the Washington state department of agriculture.

**"Fee"** means any charge made by the department for:

- (1) Inspecting and handling any commodity; or
- (2) Any service related to weighing or storing grains or commodities.

**"GIPSA, FGIS"** means the Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

**"Metric ton"** means two thousand two hundred four and six-tenths pounds.

**"Minimum operating fund balance"** means six months of grain inspection program operating expenses.

**"Official commercial inspection services"** means a contractual agreement between the applicant and the department for services specified by the applicant that will be provided at an applicant's facility.

**"Revenue minimum"** means the amount of revenue that must be collected by the department to offset expenses. In order to act as an official inspection agency under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, the program must collect revenue to offset expenses. The grain inspection program is supported entirely by the fees it generates from the services it provides as required by RCW 22.09.790. The circumstances under which charges occur to collect the revenue minimum are stated in WAC 16-240-038.

**"Service point"** means the Washington state department of agriculture offices and surrounding service areas authorized by the Federal Grain Inspection Service to provide sampling, inspecting, weighing, and certification services.

**"USDA"** means the United States Department of Agriculture.

**AMENDATORY SECTION** (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-020 Washington state grain and commodity service points.** The offices located in the following cities are service points for providing sampling, inspecting, weighing, and certification services.

(1) Service points:

- (a) Colfax.
- (b) Kalama.
- (c) Longview.
- (d) Olympia.
- ~~((e))~~ (e) Pasco.
- ~~((f))~~ (f) Seattle.
- ~~((g))~~ (g) Spokane.
- ~~((h))~~ (h) Tacoma.
- ~~((i))~~ (i) Vancouver.

(2) Aberdeen has been delegated to Washington state as a service point by the Federal Grain Inspection Service. Services for Aberdeen are as follows:

- (a) Services for Aberdeen may be requested through the Tacoma grain inspection office.
- (b) Travel time and mileage will be assessed from Tacoma to Aberdeen for all services requested at Aberdeen until a permanent staff is established.

(3) Inspection points may be added or deleted within the department's delegated and designated service area.

**AMENDATORY SECTION** (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-032 Grades and standards adopted by Washington state.** Washington state adopts the following grades and standards:

- (1) The grades and standards established by the United States Department of Agriculture from August 1, 1984, ~~((to the present))~~ and as subsequently amended, that apply to all grains and commodities regulated by this chapter.

(2) The procedures to sample, grade, test and weigh grains and commodities, established by the regulations and instructions under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, and as subsequently amended.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-036 Permanent staffing requests.** An applicant may request the department to establish permanent staffing on shifts as shown below:

(1) Requests for permanent staffing of day, night, swing, or graveyard shifts must be made in writing at least seven business days prior to the beginning of the month for which the shift(s) are requested.

(a) Requests for permanent staffing of any night, swing or graveyard shift will be deemed to include a request for permanent staffing of the day shift.

(b) The requested shift(s) will be established if the department has an adequate number of trained personnel.

(c) Confirmation of staffing requirements must be received by the inspection office by 2:00 p.m. each day Monday through Friday, for the next service day, and by 2:00 p.m. of the last business day before a Saturday, Sunday, or holiday (see WAC 16-240-034).

(d) Failure to meet the notification requirement may result in denial of service.

(2) When the department is able to staff the permanent night, swing, or graveyard shift(s) requested by the applicant, the overtime rate established under WAC 16-240-048 will be waived for the requested shift(s).

(3) Once established, permanent shifts will continue ~~((for a minimum of one calendar month))~~ until canceled by the requesting party or canceled by the department for good cause.

~~(a) ((The request for a permanent shift will remain in effect until canceled.~~

~~((b)) Cancellation requests must be received, in writing, giving at least fifteen business ((days prior to the end of the month)) days' notice.~~

~~((c)) (b) Applicants will be assessed for any shifts established at their request until the cancellation notice period has expired.~~

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-038 Revenue minimum fee process.** The circumstances under which the department may assess additional charges ~~((to meet))~~ to ((collect)) meet the revenue minimum as are as follows:

(1) When the volume of work at the established fees does not generate revenue ~~((equivalent))~~ at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate ((will be assessed)) per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

(2) ~~((Daily))~~ Work volume averaging at export locations will be determined as follows:

(a) When the ~~((daily))~~ weekly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department ~~((charges a))~~ may charge an additional fee ~~((to recover expenses)), as described in subsection (1) of this section. The weekly volume will be based on the applicable shift from Monday through the following Monday.~~

~~(b) ((The straight time hourly rate will be assessed per hour, per employee.~~

~~((c)) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under ((daily)) weekly averaging.~~

~~((2)) Monthly averaging at export locations:~~

~~(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volumes of work.~~

~~(b) When the monthly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, the department charges a fee to recover expenses.~~

~~(c) The straight time hourly rate will be assessed per hour, per employee.~~

~~(d) At export locations, the request for monthly averaging stays in effect until canceled.~~

~~(e) Requests to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.~~

~~(f) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under monthly averaging.)~~

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-042 Payment of fees and charges. (1)** All department fees and charges for services rendered are due within thirty days of the statement date. Interest at the rate of one percent per month, or fraction thereof, shall accrue on any balance owed after thirty days of the statement date.

(2) If the department does not receive payment within thirty days:

~~((1)) (a) Services may be withheld until the delinquent account is paid; or~~

~~((2)) (b) Cash payment for subsequent services may be required.~~

~~((The department assesses a penalty of twelve percent per annum on all delinquent account balances.))~~

#### NEW SECTION

**WAC 16-240-043 Minimum operating fund discount. (1)** The fund balance will be evaluated by July 1st of every even numbered year. If the fund exceeds the minimum balance by at least five percent, the excess will be prorated as a future discount to those customers who paid for services during the previous three calendar years. If an excess operat-

ing fund balance exists, the director or designee will authorize the program to apply the discount to qualified customers on a monthly basis at the time of future service billings during the next calendar year.

(2) The discount will be made available to qualified customers as follows. The department will establish the percent of discount available to qualified customers as based on each customer's fees paid over the previous three calendar years in relation to the total amount determined to be in excess of the revenue minimum. During the discount calendar year, each qualified customer will be entitled to receive a discount in the amount of one-twelfth of its total potential discount amount during each month that it incurs fees. No discount will be available in any month where the discount amount would be in excess of the total fees charged. No discount will accrue if not used during any month of the applicable calendar year.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-046 Straight time rate.** The straight time rate is assessed as cited below.

- (1) An hourly fee is specified in the schedule of fees.
- (2) No other fee is established in the schedule of fees.
- (3) The revenue minimum under WAC 16-240-038 applies.
- (4) The revenue minimum required for staffing at export locations determined on a ~~((daily or monthly))~~ weekly basis under WAC 16-240-038 applies.
- (5) No contractual agreement supersedes the straight time rate.
- (6) Straight time is assessed in one-half hour increments.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-054 Service cancellation fee.** A service cancellation fee applies when service is requested and then canceled or not performed.

- (1) When a service is requested before or after the inspection office's established hours, a cancellation fee would apply as follows:
  - (a) When a service is requested before or after an office's standard Monday through Friday shifts, or anytime on Saturdays, Sundays, or holidays; and
  - (b) The requested service is canceled after 2:00 p.m. of the last business day before the requested service; then
  - (c) A service cancellation fee according to WAC 16-240-060, Table 1, will be assessed per employee scheduled.
- (2) ~~((At locations where monthly averaging has been instituted, a cancellation fee would apply as follows:
 
  - (a) A request for service must be filed by 2:00 p.m. on the last business day before service to guarantee full staffing at the service location;
  - (b) When full staff at the location is requested and then canceled or services are not actually performed through no fault of the department; then
  - (c) The service cancellation fee will be assessed per employee scheduled.
 ))~~
  - (3)) When service is requested for a vessel inspection, a cancellation fee would apply as follows:

(a) When a vessel inspection is requested and then canceled after 2:00 p.m. of the last business day before the requested service, a cancellation fee will apply.

(b) The service cancellation fee will be assessed per employee scheduled to inspect the vessel.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-060 WSDA grain program fees for service.** USGSA—AMA—WSDA Table 1 contains fees for GIPSA, FGIS scale authorization, straight-time hourly rate, overtime hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

**USGSA—AMA—WSDA Table 1  
WSDA Grain Program Fees for Service**

1. Scale authorization fee, <b>per hour, per employee</b>	<del>\$(50.00)</del> <u>56.00</u>
2. Straight-time rate, <b>rate per hour, per employee</b>	<del>\$(30.00)</del> <u>56.00</u>
3. Overtime rate, <b>per hour, per employee</b>	<del>\$(45.00)</del> <u>28.00</u>
4. Service cancellation fee, <b>per employee</b>	<del>\$(150.00)</del> <u>200.00</u>

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-070 Fees for services under the United States Grain Standards Act.** (1) USGSA Tables 1 through 7 in this section contain fees for official sampling and/or inspection and/or weighing services and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not ~~((specifically cited in WAC))~~ otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 ~~((and/))~~ or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the recipient of services to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

**USGSA Table 1  
Fees for Combination Inspection and Weighing Services**

1. In, out, or local, <b>per metric ton</b>	<del>\$(0.150)</del> <u>0.260</u>
<del>((2. Vessels (export and domestic ocean-going))</del>	

a.	First 2,500,000 metric tons per fiscal year, <b>per metric ton</b>	<b>\$0.200</b>
b.	From 2,500,001 to 4,000,000 metric tons per fiscal year, <b>per metric ton</b>	<b>\$0.150</b>
e.	From 4,000,001 to 5,500,000 metric tons per fiscal year, <b>per metric ton</b>	<b>\$0.100</b>
d.	Over 5,500,000 metric tons per fiscal year, <b>per metric ton</b>	<b>\$0.050</b>
<b>Note: For vessels (export and domestic ocean-going):</b>		
<ul style="list-style-type: none"> <li>■ The vessel tonnage assessment is applied in full lot increments and is reset at the beginning of each fiscal year. The fiscal year begins July 1 and ends the following June 30.</li> <li>■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee.</li> <li>■ During vessel loading, assessments for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be assessed at the per unit rates included in this fee schedule.)</li> </ul>		
2.	<u>Locations with approved automated weighing systems, per metric ton</u>	<b>\$0.240</b>
<b>Note: For automated weighing systems:</b>		
<ul style="list-style-type: none"> <li>• <u>When approved automated weighing systems are not functioning properly, additional staff may be required at the straight time hourly rate.</u></li> </ul>		
3.	Trucks or containers, <b>per truck or container</b>	<del>\$(22.00)</del> <b>25.00</b>
4.	Additional nongrade determining factor analysis, <b>per factor</b>	<b>\$3.00</b>

**USGSA Table 2  
Fees for Official Sampling and Inspection Without Weighing Services**

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, <b>per truck or container 1</b>	<del>\$(17.00)</del> <b>20.00</b>
2.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, <b>per railcar 1, 2</b>	<del>\$(17.00)</del> <b>20.00</b>

3.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, <b>per railcar 1, 2</b>	<del>\$(17.00)</del> <b>20.00</b>
4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, <b>per railcar 1, 2</b>	<del>\$(26.50)</del> <b>30.00</b>
5.	<u>Inspection of bagged grain, including tote bags, per hundred-weight (cwt)</u>	<b>\$0.100</b>
6.	<u>Additional nongrade determining factor analysis, per factor</u>	<b>\$3.00</b>
<b>((+)) Note: The following applies to all fees in this table:</b>		
<ul style="list-style-type: none"> <li>■ Analysis that requires additional equipment or personnel will be provided at the hourly rate. Examples are special grades, such as the determination of waxy corn, or criteria analysis, such as stress cracks in corn or seed sizing in soybeans.</li> <li>((2)) ■ The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade.</li> <li>((5: Additional nongrade determining factor analysis, <b>per factor</b> <del>\$3.00)</del></li> </ul>		

**USGSA Table 3  
Fees for Official Class X Weighing Services Without an Inspection of Bulk Grain**

1.	In, out, or local, <b>per metric ton</b>	<del>\$(0.130)</del> <b>0.200</b>
2.	Trucks or containers, <b>per weight lot</b>	<del>\$(15.00)</del> <b>20.00</b>

**USGSA Table 4  
Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors**

1.	Submitted samples, including factor-only inspections, <b>per inspection 1, 2</b>	<del>\$(9.00)</del> <b>12.00</b>
2.	Reinspections based on official file sample, including factor-only reinspections, <b>per inspection 1, 2</b>	<del>\$(9.00)</del> <b>12.00</b>
3.	Additional, nongrade determining factor analysis, <b>per factor 2</b>	<b>\$3.00</b>

**((4)) Note: The following applies to all fees in this table:**

- When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above.
- For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4.
- ((2))** ■ Analysis that requires additional equipment or personnel will be provided at the hourly rate. Examples are special grades, such as the determination of waxy corn, or criteria analysis, such as stress cracks in corn or seed sizing in soybeans.

**USGSA Table 5  
Fees for Official Analysis for Protein, Oil, or Other Official Constituents**

Original or reinspection based on file sample, <b>per test</b>	<del>\$(7.00)</del> <b>2.00</b>
<b>Note: The following applies to the fee in USGSA Table 5:</b>	
<ul style="list-style-type: none"> <li>■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be assessed.</li> <li>■ Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately.</li> </ul>	

**USGSA Table 6  
Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods**

Original, reinspection based on official file sample, or submitted sample, <b>per test</b>	<del>\$(37.50)</del> <b>40.00</b>
<b>Note: The following applies to this table:</b>	
<ul style="list-style-type: none"> <li>■ When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be assessed in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2).</li> </ul>	

**USGSA Table 7  
Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services**

1. Vessels or ocean-going barges stowage examination, original or reinspection, <b>per request</b>	<del>\$(300.00)</del> <b>500.00</b>
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2. Other stowage examinations of rail-cars, trucks, trailers, or containers, original or reinspection, <b>per inspection</b>	<del>\$(9.00)</del> <b>12.00</b>
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AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946.** (1) AMA Tables 1 through 5 in this section contain official sampling and/or inspection and/or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not (~~specifically cited in WAC~~) otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 and/or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies and/or equipment when requesting a new or special type of analysis.

**AMA Table 1  
Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors**

1. In, out, or local, <b>per metric ton 1, 2</b>	<del>\$(0.150)</del> <b>0.260</b>
2. <u>Locations with approved automated weighing systems, per metric ton</u>	<b>\$0.240</b>
<b>Note: For automated weighing systems:</b>	
<ul style="list-style-type: none"> <li>■ <u>When approved automated weighing systems are not functioning properly, additional staff may be required at the straight time hourly rate.</u></li> </ul>	
3. Vessels (export or domestic), <b>per metric ton 1, 3, 4</b>	<del>\$(0.200)</del> <b>0.260</b>
<del>((3-))</del> 4. Trucks or containers, <b>per truck or container 1, 2</b>	<b>\$30.00</b>
<del>((4-))</del> 5. Additional, nongrade determining factor analysis, <b>per factor 1</b>	<b>\$3.00</b>
<b>Note: The following applies to all fees in this table:</b>	
<ul style="list-style-type: none"> <li><b>((4))</b> ■ The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, and/or other applicant defined criteria.</li> <li><b>((2))</b> ■ Dockage breakdown is included in the basic inspection fee.</li> </ul>	

- ~~(3)~~ ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee.
- (4) ■ Assessments for other tests, such as mycotoxin analysis, provided during vessel loading will be assessed at the per unit rates included in this fee schedule.

**AMA Table 2  
Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors**

1.	Trucks <del>(s)</del> or containers <del>(s or tote lots,)</del> sampled by USDA approved grain probe, including factor only or sampling only services, <b>per truck<del>(s)</del> or container<del>(s or tote lot)</del></b>	<b>\$30.00</b>
2.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, <b>per railcar</b>	<b>\$30.00</b>
3.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, <b>per railcar</b>	<b>\$30.00</b>
4.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, <b>per hundredweight (cwt)</b>	<del>\$(0.080)</del> <b>0.100</b>
5.	Additional, nongrade determining factor analysis, <b>per factor</b>	<b>\$3.00</b>
<b>Note: The following applies to all fees in this table:</b>		
<ul style="list-style-type: none"> <li>■ Dockage breakdown is included in the basic inspection fee.</li> <li>■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.</li> <li>■ The rates shown above also apply to services provided under federal criteria inspection instructions.</li> </ul>		

**AMA Table 3  
Fees for Official Weighing Services without Inspections**

1.	In, out, or local, per metric ton	<del>\$(0.130)</del> <b>0.200</b>
2.	Trucks or containers, <b>per weight lot</b>	<del>\$(15.00)</del> <b>20.00</b>

**AMA Table 4  
Fees for Inspecting Submitted Samples**

1.	Submitted sample, thresher run or processed, including factor-only inspections, <b>per sample</b>	<del>\$(19.00)</del> <b>20.00</b>
2.	Additional, nongrade determining factor analysis, <b>per factor</b>	<b>\$3.00</b>
<b>Note: The following applies to all fees in this table:</b>		
<ul style="list-style-type: none"> <li>■ Dockage breakdown is included in the basic inspection fee.</li> <li>■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.</li> <li>■ The rates shown above also apply to inspection services provided under federal criteria inspection instructions.</li> <li>■ When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.</li> </ul>		

**AMA Table 5  
Fees for Miscellaneous Services**

1.	Falling number determinations, including liquefaction number on request, <b>per determination</b>	<del>\$(15.00)</del> <b>20.00</b>
2.	Sampling and handling of processed commodities, <b>per hour, per employee</b>	<del>\$(30.00)</del> <b>56.00</b>
3.	Laboratory analysis, <b>at cost</b>	<b>At cost</b>
<b>Note: The following applies to all fees in this table:</b>		
<ul style="list-style-type: none"> <li>■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department.</li> </ul>		

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

**WAC 16-240-090 Fees for other services performed by WSDA.** (1) WSDA Tables 1 through 3 in this section contain fees for other services performed at the request of the applicant when no USGSA or AMA standards exist. Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Applicant-defined analysis may be available from the department.

(a) Hourly fees for sampling and/or sample preparation may be assessed.

(b) The analysis will be provided at the established hourly rate or may be provided at the cost quoted by the laboratory or organization providing the service or analysis.

(c) Applicant may be required to provide supplies and equipment when requesting a new analysis or special service.

(3) Official samples, as defined under 7 C.F.R. 800.75, may be provided upon timely request by an interested party, specifying the number of samples requested. Samples are provided in up to five pound bags and are charged the fee stated in Table 3.

**WSDA Table 1****Fees for Inspecting Miscellaneous Agricultural Commodities under Chapter 16-213 WAC**

1. Submitted sample, <b>per sample</b>	<del>\$(9.00)</del> <b>12.00</b>
2. Railcars, sampled by USDA approved diverter-type mechanical samplers, <b>per car</b>	<del>\$(17.00)</del> <b>20.00</b>
3. Railcars, sampled by USDA approved grain probe, <b>per car</b>	<del>\$(26.50)</del> <b>30.00</b>
4. Trucks or containers, sampled by USDA approved grain probe, <b>per truck or container</b>	<del>\$(17.00)</del> <b>20.00</b>
<b>Note: The following applies to all ((items)) fees in ((WSDA Table 1)) this table:</b>	
<ul style="list-style-type: none"> <li>■ These rates also apply to inspection services provided under applicant-specified criteria or standards other than USGSA, AMA or WSDA. For example: Millet may be inspected under state of Montana standards, upon applicant request.</li> </ul>	

**WSDA Table 2****Fees for Phytosanitary Certification**

1. In conjunction with official inspection, <b>per certificate</b>	<del>\$(25.00)</del> <b>30.00</b>
2. For phytosanitary certification only, without official inspection, add required sampling time, <b>per hour, per employee</b>	<del>\$(30.00)</del> <b>56.00</b>

**WSDA Table 3****Fees for Miscellaneous Services**

1. Unofficial constituent analysis, <b>per test</b>	<del>\$(7.00)</del> <b>9.00</b>
2. Sample pick-up fee, on department established routes, <b>per sample</b>	<del>\$(0.85)</del> <b>1.25</b>
3. Laboratory analysis, provided at other than WSDA grain inspection program offices, <b>per analysis</b>	<b>At cost</b>
4. Official samples, <b>per bag</b>	<b>\$5.00</b>

**WSR 12-17-160****PROPOSED RULES****STATE BOARD OF HEALTH**

[Filed August 22, 2012, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-068.

Title of Rule and Other Identifying Information: Chapter 246-215 WAC, Food service, incorporating requirements from the 2009 version of the Food and Drug Administration (FDA) Food Code, and addressing gaps and overlaps in food safety for preschools.

Hearing Location(s): Washington State Capital [Capitol] Campus, John A. Cherberg Building, Senate Hearing Room 3, on October 10, 2012, at 10:45 a.m.

Date of Intended Adoption: October 10, 2012.

Submit Written Comments to: Joe Graham, Department of Health, P.O. Box 47825, Olympia, WA 98504-7825, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2261, by September 25, 2012.

Assistance for Persons with Disabilities: Contact Desiree Robinson by September 25, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to promote and protect public health by providing requirements that prevent the spread of disease through food. The state rules need to be revised to reflect requirements of the 2009 FDA Food Code. In addition, the proposed rules address gaps and overlaps in food safety for preschools, and are revised to clarify requirements by incorporating selected 2009 FDA Food Code requirements in full rather than adopting them by reference.

Reasons Supporting Proposal: RCW 43.20.145 requires the state board of health (SBOH) to consider the latest version of the FDA Food Code in adopting the state food safety rules. The current rules are based on the 2001 FDA Food Code. The 2009 FDA Food Code is the latest published version. The state rules need to be revised to incorporate selected requirements from these new standards.

Statutory Authority for Adoption: RCW 43.20.050 and 43.20.145.

Statute Being Implemented: RCW 43.20.050 and 43.20.145.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joe Graham, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3305.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

**Small Business Economic Impact Statement**

**Section 1: Introduction:** In 2003, the legislature directed the SBOH to consider the most recent version of the FDA Food Code whenever the board undertakes rule development for food service. This direction is codified in RCW 43.20.145. The food code promotes uniform national food safety standards. Washington is one of forty-nine states to

use some version of the FDA Food Code as the foundation of its retail food safety rules. The FDA Food Code is a model that establishes practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. This reduces the health risk and financial burden from foodborne disease.

The Centers for Disease Control estimate that forty-eight million Americans get sick, 128,000 are hospitalized, and three thousand die from foodborne diseases every year.<sup>1</sup> The resulting annual cost is estimated to be \$77.7 billion.<sup>2</sup> Health effects from foodborne disease include diarrhea, vomiting, numbing of extremities, kidney failure, and death. Some people have lifelong health complications from foodborne disease. Washington state has averaged thirty-five foodborne disease outbreaks per year during the last five years.

The leading causes of foodborne disease are improper handwashing, food workers working while ill, food workers using bare hands to handle ready-to-eat food, contaminated products, and improper cooking, cooling, and reheating.

Foods that cause the most outbreaks include fresh produce, poultry, beef, and dairy products.

The most important provisions of the FDA Food Code pertain to:

- Potentially hazardous foods (PHF), which are those that support the growth of pathogens.
- Food employee health.
- Handwashing.
- Prohibiting bare hand contact with ready-to-eat food.
- Handling produce.

A diverse group of food establishments in Washington are responsible for following the rules so they can protect the public from the devastating effects of foodborne disease. These include:

- Restaurants.
- Grocery stores.
- Schools.
- Hospitals.
- Convenience stores.
- Mobile food units.
- Food banks.
- Temporary food booths at fairs, festivals, and farmer's markets.

In January 2010, the board began the process of revising the current food safety rules, chapter 246-215 WAC. Repre-

sentatives from industry, regulators, the public, and academia formed a core workgroup to discuss changes to the rules and to formulate recommendations to the board. (See Appendix A for a list of core workgroup members.) The proposed rules reflect the work of the core workgroup, the department of health (department), and the board's direction for rule revision.

**Section 2: What Is the Scope of the Rule?** This proposal amends chapter 246-215 WAC, Food service. RCW 43.20.145 requires the board to consider the most recent version of the FDA Food Code in adopting the state food safety rules. The current rules are based on the 2001 FDA Food Code. Since then, the 2005 and 2009 FDA Food Code versions have been published. The rules need to be revised to consider these new standards.

The board is also considering a new section to address the current gaps and overlaps in food safety rules for various facilities responsible for providing meals for young children. In addition, some provisions in the rules need to be revised so they are more clear and understandable by the public and those who must follow them.

Some examples of the changes proposed in this revision to address these underlying issues are to:

- Refrigerate cut leafy greens and cut tomatoes.
- Reduce the hot holding temperature of food to one hundred thirty-five degrees Fahrenheit.
- Identify the source of wild harvested mushrooms and only use the species of wild harvested mushrooms listed.
- Reduce the physical facility requirements for pre-schools that meet specific food safety criteria.
- Exclude food employees diagnosed with Norovirus from working in food establishments serving a highly susceptible population.
- Prohibit conditional employees from beginning employment if they report symptoms of or diagnosis with a foodborne disease.
- Require produce to be rinsed under running water as part of the washing procedure.
- Require handwashing sinks to be within twenty-five feet of food preparation areas.

**Section 3: Which Businesses Are Impacted by the Proposed Rule Package? What Are Their North American Industry Classification System (NAICS) codes? What Are Their Minor Cost Thresholds?**

**Businesses with Employees**

NAICS Code	Description	Number of Establishment Washington	Minor Costs Threshold 1% of Annual Payroll	Minor Costs Threshold 0.03% of Annual Receipt
445110	Supermarkets and other grocery (except convenience) stores.	1,431	9,688	26,117
445120	Convenience stores.	598	574	2,112
4452	Specialty food stores.	630	1,006	1,716
446191	Food (health) supplement stores.	225	809	1,661
447110	Gasoline stations with convenience stores.	1,750	1,171	9,882

NAICS Code	Description	Number of Establishment Washington	Minor Costs Threshold 1% of Annual Payroll	Minor Costs Threshold 0.03% of Annual Receipt
452910	Warehouse clubs and supercenters (this includes sales for the entire store not just food sales).	125	66,082	240,967
624210	Community food services.	138	1,351	4,408
722110	Full-service restaurants.	5,273	2,829	2,392
722211	Limited-service restaurants.	4,821	1,655	1,892
722310	Food service contractors.	447	3,565	3,926
722330	Mobile food services.	79	336	455

**Source:** U.S. Census Bureau, 2007 Economic Census, Geographic Area Series.  
 Release Date: July 1, 2011.

Preschools are not included in this table because the proposed rule is expected to reduce cost for preschools. Hotels and motels are not identified separately in the table. Although many hotels and motels have restaurant services this analysis assumes that the restaurants will be captured under either the NAICS Code 722110, full-service restaurants, or the NAICS Code 722211, limited-service restaurants.

**Section 4: What Are the Cost Estimates per Business of the Proposed Rule?** To determine the possible costs of the proposed rules, staff conducted internet research and collected cost estimates from local health jurisdictions, food service associations, and professional service providers. The cost information is presented below as ranges of cost from lowest to highest.

WAC 246-215-03420 Cooking—Unattended cooking and hot holding, since unattended cooking is not allowed under the proposed rule, food establishments can use a data logger to meet the requirement for attended cooking. The cost for a wireless data logger varies as indicated below.

- \$199 based on the following costs:
  - o Wireless data logger with a data logging program: \$85
  - o Thumb drive receiver: \$35
  - o Sending unit: \$79.
- Data logger with single probe: \$300
- Data logger without probes: \$400

Based on this information, the costs for requiring attended cooking during the day can range from \$199 to \$400.

WAC 246-215-05255 Location and placement of handwashing sinks, handwashing sinks must be within twenty-five feet of food preparation areas. This may require some new food establishments to install additional sinks in new or existing buildings. This requirement is not retroactive so does not affect existing food establishments unless they remodel. This requirement does not apply to temporary food establishments and those providing food samples as these types of activities are regulated under WAC 246-215-09225 and 246-215-05210 respectively.

For new construction, costs to comply with this rule are negligible. Placement of sinks to meet the requirements of

the rule would be absorbed in the design and construction process.

Costs to comply with this rule for remodeled food establishments could vary greatly depending on the scope of the remodel, age and condition of the building, and specific construction of the building, e.g., concrete versus wood floors.

Based on this information, the costs of requiring a handwashing sink within twenty-five feet of food preparation areas could range from \$280 for simple installation of a sink (\$80 sink and \$200 for labor) to an unknown amount for a more significant remodel.

WAC 246-215-08305 Exempt from permit, requires food establishment permits for vendors making caramel apples and pork skins. The following are permit costs from selected local health jurisdictions:

- Benton-Franklin: "Limited Menu" permit category. Annual cost: \$159.
- Chelan-Douglas: "Low Risk" permit category. Annual cost: \$48.
- King: "Limited prep" permit category:
  - o Temporary event permit: \$55 per event.
  - o Farmers market: \$55 per season.
- Pierce: "Limited" permit category:
  - o Less than fourteen days: \$45 per event.
  - o Fourteen – twenty-one days: \$68 per event. (This includes the Puyallup Fair which is a seventeen day event.)

Based on this information, the costs for permits for caramel apples and pork skins can range from \$48 to \$159.

**Summary of Compliance Costs:**

NAICS Code	NAICS Business Description	Unattended Cooking and Hot Holding	Location and Placement of Handwashing Sinks	Previous Exempt from Permit	Total
445110	Supermarkets and other grocery (except convenience) stores.	0	\$280	0	\$280
445120	Convenience stores.	0	\$280	0	\$280
4452	Specialty food stores.	0	\$280	0	\$280
446191	Food (health) supplement stores.	0	\$280	0	\$280
447110	Gasoline stations with convenience stores.	0	\$280	0	\$280
452910	Warehouse clubs and supercenters.	0	\$280	0	\$280
624210	Community food services.	0	\$280	\$159	\$439
722110	Full-service restaurants.	\$400	\$280	0	\$680
722211	Limited-service restaurants.	\$400	\$280	0	\$680
722310	Food service contractors.	0	\$280	\$159	\$439
722330	Mobile food services.	\$400	\$280	\$159	\$839

**Section 5: Does the Rule Impose More than Minor Costs on Impacted Businesses?**

Cost range per business:	\$159 - Indeterminate (from Section 4)
Minor cost threshold - 1% payroll:	\$574 - \$66,082 (from Section 3)
Minor cost threshold - 0.03% of receipts:	\$455 - \$240,967 (from Section 3)

As illustrated above, the average known costs the rules impose on businesses may not exceed the minor cost thresholds for payroll or receipts. However, since the cost of installing additional handwashing sinks in a remodeled food establishment is unknown, staff assumes the average cost per business may exceed both of the minor cost thresholds.

**Section 6: Does the Rule Have a Disproportionate Impact on Small Businesses?** The costs outlined in Section 4 of this small business economic impact statement apply universally to all businesses, regardless of size. Because of this, staff assumes the proposed rules have a disproportionate impact on small business.

**Section 7: Was an Effort Made to Reduce the Impact of the Rule?** 1. Were substantive regulatory requirements reduced, modified, or eliminated?

In the course of rule development, the following alternatives were assessed and rejected because they were overly burdensome:

*Alternative Version #1:* Adopt the FDA version of Part 2-2, Employee Health, exactly as it appears in the 2009 FDA Food Code. For Norovirus, the current rules do not require food employees to report a diagnosed illness from Norovirus. The 2009 FDA Food Code requires food employees to report diagnosis of Norovirus. The proposed rules retain the current language and do *not* require food employees diagnosed with Norovirus to report the condition to the person in charge.

Compared to this alternative version, the proposed rules are less burdensome for food establishments to comply with because the proposed rules are clearer and more concise. Also, they give the person in charge of a food establishment

more specific criteria to use when making decisions about allowing ill employees to return to work.

*Alternative Version #2:* Don't adopt a new section exempting preschools from specified code requirements based on menu complexity. Compared to the alternative version, the proposed rules are less burdensome because it will be easier and less expensive for preschools to comply with these reduced equipment standards rather than having to meet the requirements of the entire chapter regardless of the food provided.

*Alternative Version #3:* Don't modify the provisions of the rule regarding pooled eggs. Compared to the alternative version, the changes to this provision in the proposed rule are less burdensome because the current rule prohibits combining more than two eggs unless the eggs are broken and prepared for immediate service in response to a consumer's order. Food employees will now be allowed to combine large numbers of eggs immediately before cooking and won't have to spend time changing processes and recipes to meet the requirements of the existing rule.

*Alternative Version #4:* Don't modify the provisions of the rule regarding food sources for donated food distributing organizations (DFDO). Compared to the alternative version, the proposed rule is less burdensome because it allows DFDO to receive food from food establishments that has been prepared more than eight hours in advance. Most food that food establishments donate is leftovers they have usually held for more than eight hours. Continuing to prohibit this would decrease the amount of food donations to DFDO. The proposed rule is also less burdensome because it allows DFDO to receive ready-to-eat, nonpotentially hazardous packaged food from private homes as well as commercially packaged frozen food. These types of foods are essential donations to a DFDO.

*Alternative Version #5:* Adopt education and certification requirements for harvesters of wild mushrooms. Compared to this alternative version, the proposed rule is less burdensome because it does not impose costs for meeting education and certification requirements. Assuming there would

be fewer harvesters under a certification program and therefore reduced supply of wild harvested mushrooms, the proposed rule also does not needlessly reduce the supply of wild mushrooms available to food establishments.

2. Were record-keeping and reporting requirements simplified, reduced, or eliminated? The date marking requirements of the 2009 FDA Food Code were considered during rule development, but not included in the proposed rule. The proposed rule is the same as the current rule and does not contain date marking provisions. Compared to the alternative version, the proposed rule is less burdensome because food employees will not have to mark food with expiration dates. This is a savings in labor costs without an increased risk to public health. Local health jurisdictions will not need to spend time learning how to apply this rule and will not spend valuable inspection time on a complicated rule provision with questionable public health benefit.

3. Were the frequency of inspections reduced? This rule revision does not reduce frequency of inspections.

4. Were compliance timetables delayed? The rules will be implemented a minimum of four months after they are adopted. The effective date is expected to be in the spring of 2013. The delayed effective date allows those who must comply with the rules time to receive training and implement changes to business practices prior to compliance and enforcement activities by the regulatory authority.

5. Were fine schedules for noncompliance reduced or modified? The proposed rules do not include fine schedules.

6. Were other mitigation techniques created or implemented? The mitigation techniques included in this rule revision are described above.

**Section 8: Were Small Businesses Involved in the Rule Development Process?** Representation for small businesses was provided by the Washington restaurant association (WRA) representative who participated on the rule development core workgroup. Eighty-five percent of the restaurants the WRA represents are considered small businesses which equates to over four thousand small businesses. The WRA representative attended all meetings during the course of rule development which took place monthly for over a year. He contributed to the development of the proposed rules through participation in the workgroup meeting, subcommittee meetings, and email correspondence.

**Section 9: Will Businesses Have to Hire or Fire Any Employees Because of the Requirements in the Rule?** The proposed rules do not require the businesses affected to hire or fire any employees.

<sup>1</sup> <http://www.cdc.gov/Features/dsFoodborneEstimates/>.

<sup>2</sup> Economic Burden from Health Losses Due to Foodborne Illness in the United States; Journal of Food Protection, Vol. 75, No. 1, 2012, Pages 123-131.

A copy of the statement may be obtained by contacting Joe Graham, Department of Health, P.O. Box 47825, Olympia, WA 98504, phone (360) 236-3305, fax (360) 236-2261, e-mail [joe.graham@doh.wa.gov](mailto:joe.graham@doh.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joe Graham, Department of Health,

(b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21

P.O. Box 47825, Olympia, WA 98504, phone (360) 236-3305, fax (360) 236-2261, e-mail [joe.graham@doh.wa.gov](mailto:joe.graham@doh.wa.gov).

August 22, 2012  
Michelle A. Davis  
Executive Director

## PART 1: INTENT, SCOPE, AND DEFINITIONS

### NEW SECTION

**WAC 246-215-01100 Intent—Food safety, illness prevention, and honest presentation (2009 FDA Food Code 1-102.10).** The purpose of this chapter is to safeguard public health and provide to consumers food that is safe, not adulterated, and honestly presented.

### NEW SECTION

**WAC 246-215-01105 Scope—Statement (2009 FDA Food Code 1-103.10).** This chapter establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension.

### NEW SECTION

**WAC 246-215-01110 Applicability.** (1) The requirements of this chapter apply to an operation that meets the definition of a food establishment as defined in WAC 246-215-01115(48).

(2) When a local board of health adopts rules with more stringent provisions than those contained in this chapter, the more stringent rules apply.

### NEW SECTION

**WAC 246-215-01115 Definitions, abbreviations, and acronyms (2009 FDA Food Code 1-201.10(B)).** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Accredited program."

(a) Accredited program means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) Accredited program refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline, and grievance procedures; and test development and administration.

(c) Accredited program does not refer to training functions or educational programs.

(2) "Additive."

(a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 C.F.R. 170.3 (e)(1).

C.F.R. 70.3(f).

(3) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 402.

(4) "Approved" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) "Asymptomatic."

(a) Asymptomatic means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(b) Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

(6) " $A_w$ " means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $A_w$ .

(7) "Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

(8) "Bed and breakfast operation" means a private home or inn offering one or more lodging units on a temporary basis to travelers.

(9) "Beverage" means a liquid for drinking, including water.

(10) "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(11) "Catering operation."

(a) Catering operation means a person who contracts with a client to prepare a specific menu and amount of food in an approved food establishment for service to the client's guests or customers at a different location.

(b) Consistent with its application under WAC 246-215-08325, a catering operation approved for a permit may cook or perform final preparation on certain food at the service location.

(12) "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(13) "C.F.R." means Code of Federal Regulations. Citations in this chapter to the C.F.R. refer sequentially to the Title, Part, and Section numbers, such as 40 C.F.R. 180.194 refers to Title 40, Part 180, Section 194.

(14) "CIP."

(a) CIP means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(b) CIP does not include the cleaning of equipment such as band saws, slicers, or mixers that are subject to in-place manual cleaning without the use of a CIP system.

(15) "Commingle" means:

(a) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or

(b) To combine shucked shellfish from containers with different container codes or different shucking dates.

(16) "Comminuted."

(a) Comminuted means reduced in size by methods that include chopping, flaking, grinding, or mincing.

(b) Comminuted includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausage made from two or more meats.

(17) "Commissary" means an approved food establishment where food is stored, prepared, portioned, or packaged for service elsewhere.

(18) "Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential employees who might be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

(19) "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

(20) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(21) "Corrosion-resistant" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(22) "Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf (previously table-mounted equipment).

(23) "Critical control point" means a point or procedure in a specific food system where loss of control might result in an unacceptable health risk.

(24) "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard might occur.

(25) "Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley. The term "cut" does not include removing and discarding the exterior leaves.

(26) "Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or deuration pro-

cessor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

(27) "Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(28) "Donated food distributing organization" means a charitable nonprofit organization under Section 501(c) of the federal Internal Revenue Code that distributes food free of charge to the needy.

(29) "Donor" means a person, corporation, association, or other organization that donates food to a donated food distributing organization under the provisions of chapter 69.80 RCW, known as the Good Samaritan Food Donation Act.

(30) "Donor kitchen" means a kitchen that is used by a donor to handle, store, or prepare food for donation to needy persons through a donated food distributing organization and which is not a residential kitchen in a private home.

(31) "Drinking water."

(a) Drinking water means water that meets 40 C.F.R. 141, National Primary Drinking Water Regulations.

(b) Drinking water is traditionally known as "potable water."

(c) Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(d) Drinking water means potable water that is supplied in compliance with chapters 246-290 and 246-291 WAC.

(32) "Dry storage" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous food and dry goods such as single-service articles.

(33) "Easily cleanable."

(a) Easily cleanable means a characteristic of a surface that:

(i) Allows effective removal of soil by normal cleaning methods;

(ii) Is dependent on the material, design, construction, and installation of the surface; and

(iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use.

(b) Easily cleanable includes a tiered application of the requirements that qualify the surface as easily cleanable as specified in (a) of this subsection to different situations in which varying degrees of cleanability are required such as:

(i) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

(ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

(34) "Easily movable" means:

(a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(35) "Egg."

(a) Egg means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, turkey, or any other species of fowl.

(b) Egg does not include:

(i) A balut;

(ii) The egg of a reptile species such as alligator; or

(iii) An egg product.

(36) "Egg product."

(a) Egg product means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption such as dried, frozen, or liquid eggs.

(b) Egg product does not include food which contains eggs only in a relatively small portion such as cake mixes.

(37) "Employee" means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(38) "Enterohemorrhagic *Escherichia coli* (EHEC)" means *E. coli* which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E. coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestines. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC might be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. Also see Shiga Toxin-producing *E. coli*.

(39) "EPA" means the United States Environmental Protection Agency.

(40) "Equipment."

(a) Equipment means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(b) Equipment does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(41) "Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

(42) "FDA" means the United States Food and Drug Administration.

(43) "Fish."

(a) Fish means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(44) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(45) "Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(46) "Food-contact surface" means:

(a) A surface of equipment or a utensil with which food normally comes into contact; or

(b) A surface of equipment or a utensil from which food might drain, drip or splash:

(i) Into a food; or

(ii) Onto a surface normally in contact with food.

(47) "Food employee" means an individual working with food that is not packaged, food equipment or utensils, or food-contact surfaces.

(48) "Food establishment."

(a) Food establishment means an operation that:

(i) Stores, prepares, packages, serves, and vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer; or to a conveyance used to transport people; institution; or food bank; and

(ii) Relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery or grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) Food establishment includes:

(i) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(c) Food establishment does not include:

(i) An establishment that offers only food that is not potentially hazardous food prepackaged in a licensed food establishment or food processing plant;

(ii) An establishment that offers only minimally cut, unprocessed fruits, vegetables, and fresh herbs that are not potentially hazardous food or ready-to-eat food;

(iii) A food processing plant, cottage food operation, or other establishment for activities regulated by the Washington state department of agriculture or the United States Department of Agriculture;

(iv) An establishment that offers only ready-to-eat food that is not potentially hazardous food produced in a licensed

food establishment or food processing plant (such as pre-mixed soda pop, powdered creamer, pretzels, cookies, doughnuts, cake, or meat jerky) that are served without direct hand contact, with limited portioning, directly onto or into sanitary single-use articles or single-service articles from the original package;

(v) An establishment that offers only hot beverages (such as coffee, hot tea, or hot apple cider) that are not potentially hazardous food served directly into sanitary single-service articles;

(vi) An establishment that offers only dry, nonready-to-eat foods (such as dry beans, dry grains, in-shell nuts, coffee beans, tea leaves, or herbs for tea) that are not potentially hazardous foods;

(vii) An establishment that offers only prepackaged frozen confections produced in a licensed food establishment or food processing plant;

(viii) A residential kitchen in a private home or other location, if only baked goods that are not potentially hazardous food are prepared and wrapped in a sanitary manner for sale or service by a nonprofit organization operating for religious, charitable, or educational purposes and if the consumer is informed by a clearly visible placard at the sales or service location that the foods are prepared in a kitchen that is not inspected by a regulatory authority;

(ix) A location where foods that are prepared as specified in (b)(viii) of this subsection are sold or offered for human consumption;

(x) A hotel/motel or other similar business that maintains an ice dispensing machine for self-service use by guests and the ice is not used by a food establishment;

(xi) A kitchen in a private home operated as a family day care provider as defined in RCW 43.215.010 (1)(c) or an adult family home as defined in RCW 70.128.010, used only to prepare food for residents and other people for whom the operation is licensed to provide care;

(xii) A private home that receives catered or home-delivered food;

(xiii) A private home or other location used for a private event;

(xiv) A donor kitchen; and

(xv) A location used for a potluck.

(49) "Food processing plant."

(a) Food processing plant means a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

(b) Food processing plant does not include a food establishment.

(50) "Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

(51) "Game animal."

(a) Game animal means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 C.F.R. 301 Definitions, or as poultry, or fish.

(b) Game animal includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel,

opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) Game animal does not include ratites.

(52) "Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

(53) "Grill marked" means food that has been seared using a noncontinuous cooking process in which the food is placed on a heated cooking surface for no more than one minute on each side.

(54) "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(55) "Handwashing sink."

(a) Handwashing sink means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands.

(b) Handwashing sink includes an automatic handwashing facility.

(56) "Hazard" means a biological, chemical, or physical property that might cause an unacceptable consumer health risk.

(57) "Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant or similar medical professional.

(58) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(59) "Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(a) Immunocompromised, preschool age children, or older adults; and

(b) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

(60) "Immediate service" means service to the public within thirty minutes of preparation.

(61) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne disease outbreak, gross insanitary occurrence or condition, or other circumstance that might endanger public health.

(62) "Injected" means manipulating a meat to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping."

(63) "Juice."

(a) Juice means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.

(b) Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.

(64) "Kitchenware" means food preparation and storage utensils.

(65) "Law" means applicable local, state, and federal statutes, regulations, and ordinances.

(66) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(67) "Local board of health" means the county or district board of health.

(68) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(69) "Major food allergen."

(a) Major food allergen means:

(i) Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food as specified in (a)(i) of this subsection.

(b) Major food allergen does not include:

(i) Any highly refined oil derived from a food specified in (a)(i) of this subsection and any ingredient derived from such highly refined oil; or

(ii) An ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004. (Public Law 108-282.)

(70) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish and poultry.

(71) "Mechanically tenderized."

(a) Mechanically tenderized means manipulating meat with deep penetration by processes which might be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device.

(b) Mechanically tenderized does not include processes by which solutions are injected into meat.

(72) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million.

(73) "Mobile food unit" means a readily movable food establishment.

(74) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(75) "Noncontinuous cooking."

(a) Noncontinuous cooking means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled

and held for complete cooking at a later time prior to sale or service.

(b) Noncontinuous cooking does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

(76) "Packaged."

(a) Packaged means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

(b) Packaged does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection:

(i) During service and receipt of the food by the consumer; or

(ii) During the display at a staffed, self-service buffet line, such as at a school.

(77) "Permit" means the document issued by the regulatory authority that authorizes a person to operate a food establishment.

(78) "Permit holder" means the entity that:

(a) Is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and

(b) Possesses a valid permit to operate a food establishment.

(79) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(80) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time.

(81) "Personal care items."

(a) Personal care items means items or substances that might be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(b) Personal care items include items such as medicines; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(82) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.

(83) "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(84) "Plumbing fixture" means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(85) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains,

including their respective connections, devices, and appurtenances within the premises; and water treating equipment.

(86) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

(a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that might be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(87) "Pooled" is the combination of four or more raw eggs, egg yolks, or egg whites.

(88) "Potentially hazardous food."

(a) Potentially hazardous food means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) Potentially hazardous food includes:

(i) An animal food that is raw or heat-treated, a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, fresh herb-in-oil mixtures, or garlic-in-oil mixtures unless modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) Except as specified in (c)(iv) of this subsection, a food that because of the interaction of its  $A_w$  and pH values is designated as product assessment required (PA) in Table A or B of this subsection:

**Table A. Interaction of pH and  $A_w$  for Control of Spores in Food Heat-treated to Destroy Vegetative Cells and Subsequently Packaged**

$A_w$ values	pH values		
	4.6 or less	>4.6 - 5.6	>5.6
≤0.92	non-PHF Food*	non-PHF Food	non-PHF Food
>0.92 - .95	non-PHF Food	non-PHF Food	PA**
>0.95	non-PHF Food	PA	PA

\* PHF means potentially hazardous food.

\*\* PA means product assessment required.

**Table B. Interaction of pH and A<sub>w</sub> for Control of Vegetative Cells and Spores in Food Not Heat-treated or Heat-treated but not Packaged.**

A <sub>w</sub> values	pH values			
	<4.2	4.2 - 4.6	>4.6 - 5.0	>5.0
<0.88	Non-PHF Food*	Non-PHF Food	Non-PHF Food	Non-PHF Food
0.88 - 0.90	Non-PHF Food	Non-PHF Food	Non-PHF Food	PA**
>0.90 - 0.92	Non-PHF Food	Non-PHF Food	PA	PA
>0.92	Non-PHF Food	PA	PA	PA

\* PHF means potentially hazardous food.  
 \*\* PA means product assessment required.

(c) Potentially hazardous food does not include:

(i) An air-cooled hard-boiled egg with shell intact, or an egg with the shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(iii) A food that because of its pH or A<sub>w</sub> value, or interaction of A<sub>w</sub> and pH values, is designated as a non-PHF food in Table A or B of this subsection;

(iv) A food that is designated as product assessment required (PA) in Table A or B of this subsection and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(A) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants or nutrients;

(B) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or

(C) A combination of intrinsic and extrinsic factors; or

(v) A food that does not support the growth or toxic formation of pathogenic microorganisms in accordance with (c)(i) or (iv) of this subsection even though the food might contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(89) "Potluck" means an event where:

(a) People are gathered to share food;

(b) People attending the event are expected to bring food to share;

(c) There is no compensation provided for people bringing food to the event;

(d) There is no charge for any food or beverage provided at the event; and

(e) The event is not conducted for commercial purposes.

(90) "Poultry" means:

(a) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 C.F.R. 381.1 Poultry Products Inspection Regulations Definitions, Poultry; and

(b) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 C.F.R. 362.1 Voluntary Poultry Inspection Regulations, Definitions.

(91) "Premises" means:

(a) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or

(b) The physical facility, its contents, and the land or property not described under (a) of this subsection if its facilities and contents are under control of the permit holder and might impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(92) "Preschool."

(a) Preschool means a program that provides organized care and education for children below the age required for kindergarten entry. Preschools operate for two or more days per week with no child enrolled on a regular basis for more than four hours per day.

(b) Preschools do not include:

(i) Programs where the parent or guardian is present at each session;

(ii) Parent-child classes where the focus is on parent education;

(iii) Short-term parks and recreation programs;

(iv) Informal parent and child groups;

(v) Irregular babysitting;

(vi) Licensed child care; or

(vii) Food preparation and service operations otherwise under permit or license by the regulatory authority.

(93) "Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as beef round, pork loin, lamb flank, or veal breast.

(94) "Private event" means a private gathering limited to members and guests of members of a family, organization, or club, where the event is not open to the general public, and where food is provided without compensation.

(95) "Public water system" means a drinking water system that is operated in compliance with chapters 246-290 and 246-291 WAC.

(96) "Ratite" means a flightless bird such as an emu, ostrich, or rhea.

(97) "Ready-to-eat food."

(a) Ready-to-eat food means food that:

(i) Is in a form that is edible without additional preparation to achieve food safety, as specified under WAC 246-215-03400 (1) through (3) or WAC 246-215-03405 or 246-215-03425; or

(ii) Is raw or partially cooked animal food and the consumer is advised as specified under WAC 246-215-03400 (4)(a) and (c); or

(iii) Is prepared in accordance with a variance that is granted as specified under WAC 246-215-03400 (4)(d); and

(iv) Might receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(b) Ready-to-eat food includes:

(i) Raw animal food that is cooked as specified under WAC 246-215-03400 or 246-215-03405, or frozen as specified under WAC 246-215-03425;

(ii) Raw fruits and vegetables that are washed as specified under WAC 246-215-03318;

(iii) Fruits and vegetables that are cooked for hot holding, as specified under WAC 246-215-03410;

(iv) All potentially hazardous food that is cooked to the temperature and time required for the specific food under WAC 246-215-03400 through 246-215-03445 and cooled as specified under WAC 246-215-03515;

(v) Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;

(vi) Substances derived from plants such as spices, seasonings, and sugar;

(vii) A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

(viii) The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: Dry, fermented sausages, such as dry salami or pepperoni; salt cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

(ix) Foods manufactured according to 21 C.F.R. Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(98) "Red high risk factors" are improper practices or procedures identified as the most prevalent contributing factors to foodborne illness or injury, as listed on the Food Establishment Inspection Report form.

(99) "Reduced oxygen packaging."

(a) Reduced oxygen packaging means:

(i) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding atmosphere (approximately twenty-one percent at sea level); and

(ii) A process as specified in (a)(i) of this subsection that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form.

(b) Reduced oxygen packaging includes:

(i) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;

(ii) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere might change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction of the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

(iii) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total

replacement of oxygen, nonrespiring food, and impermeable packaging material;

(iv) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

(v) Sous vide packaging, in which raw or partially cooked food is placed in hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(100) "Refuse" means solid waste not carried by water through a sewage system.

(101) "Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment. The local board of health, acting through the local health officer, is the regulatory authority for the activity of a food establishment, except as otherwise provided by law.

(102) "Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

(103) "Reservice" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

(104) "Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens; and unwrapped single-service or single-use articles.

(105) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 C.F.R. 590.

(106) "Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 C.F.R. 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified operator.

(107) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

(108) "Safe material" means:

(a) An article manufactured from or composed of materials that might not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(b) An additive that is used as specified in Section 409 of the federal Food, Drug, and Cosmetic Act; or

(c) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(109) "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(110) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

(111) "Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, as specified in RCW 49.60.218.

(112) "Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(113) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and might include liquids containing chemicals in solution.

(114) "Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

(115) "Shellstock" means raw, in-shell molluscan shellfish.

(116) "Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see *Enterohemorrhagic Escherichia coli*.

(117) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

(118) "Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use after which they are intended for discard.

(119) "Single-use articles."

(a) Single-use articles means utensils and bulk food containers designed and constructed to be used once and discarded.

(b) Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under WAC 246-215-04100, 246-215-04200, and 246-215-04204 for multiuse utensils.

(120) "Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

(121) "Smooth" means:

(a) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel;

(b) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(122) "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

(123) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(124) "Temporary food establishment" means a food establishment:

(a) Operating at a fixed location, with a fixed menu, for not more than twenty-one consecutive days in conjunction with a single event or celebration, such as a fair or festival; or

(b) Operating not more than three days a week at a fixed location, with a fixed menu, in conjunction with an approved, recurring, organized event, such as a farmers market.

(125) "USDA" means the United States Department of Agriculture.

(126) "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

(127) "Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

(128) "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(129) "Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

(130) "Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

(131) "Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

## PART 2: MANAGEMENT AND PERSONNEL

### Subpart A - Supervision

#### NEW SECTION

**WAC 246-215-02100 Responsibility—Assignment (2009 FDA Food Code 2-101.11).** (1) Except as specified in subsection (2) of this section, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

(2) In a food establishment with two or more separately permitted departments that are the legal responsibility of the

same permit holder and that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises.

#### NEW SECTION

**WAC 246-215-02105 Demonstration of knowledge (2009 FDA Food Code 2-102.11).** Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request, the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the hazard analysis and critical control point principles, and the requirements of this chapter. The person in charge shall demonstrate this knowledge by:

(1) Complying with this chapter by having no violations of red high risk factors during the current inspection;

(2) Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or

(3) Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(a) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

(b) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that might cause foodborne disease;

(c) Describing the symptoms associated with the diseases that are transmissible through food;

(d) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

(e) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

(f) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;

(g) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

(h) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(i) Cross contamination;

(ii) Hand contact with ready-to-eat foods;

(iii) Handwashing; and

(iv) Maintaining the food establishment in a clean condition and in good repair;

(i) Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction;

(j) Explaining the relationship between food safety and providing equipment that is:

(i) Sufficient in number and capacity; and

(ii) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

(k) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

(l) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

(m) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

(n) Identifying critical control points in the operation from purchasing through sale or service that when not controlled can contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter;

(o) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this chapter, or an agreement between the regulatory authority and the food establishment;

(p) Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

(i) Food employee;

(ii) Conditional employee;

(iii) Person in charge; and

(iv) Regulatory authority;

(q) Explaining how the person in charge, food employees and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees.

#### NEW SECTION

**WAC 246-215-02110 Duties—Food protection manager certification (2009 FDA Food Code 2-102.20).** A person in charge who is certified by a food protection manager certification program is deemed to comply with WAC 246-215-02105(2). The certification program must be evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

#### NEW SECTION

**WAC 246-215-02115 Duties—Person in charge (2009 FDA Food Code 2-103.11).** The person in charge shall ensure that:

(1) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under WAC 246-215-06290;

(2) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

(3) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the

food preparation, food storage, and warewashing areas comply with this chapter;

(4) Employees are effectively cleaning their hands by routinely monitoring the employees' handwashing;

(5) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, not adulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

(6) Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under WAC 246-215-04220 and 246-215-04580(2);

(7) Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(8) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under WAC 246-215-03620 that the food is not cooked sufficiently to ensure its safety;

(9) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

(10) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under WAC 246-215-03345;

(11) Except when approval is obtained from the regulatory authority as specified under WAC 246-215-03300(4), employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;

(12) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; and

(13) Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under WAC 246-215-02205.

#### NEW SECTION

**WAC 246-215-02120 Food worker cards.** (1) The permit holder and person in charge of the food establishment shall ensure that all food employees are in compliance with the provisions of chapter 69.06 RCW and chapter 246-217 WAC for obtaining and renewing valid food worker cards.

(2) The permit holder and person in charge of the food establishment shall display or file the original or a copy of the food worker card of each food employee at the employee's

place of employment, to be available for inspection by the regulatory authority upon request.

(3) This section does not add to, or remove from, the provisions of chapter 69.06 RCW and chapter 246-217 WAC regarding food worker cards.

### **Subpart B - Employee Health**

#### NEW SECTION

**WAC 246-215-02200 Employee health—Reporting policy.** The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of illness symptoms.

#### NEW SECTION

**WAC 246-215-02205 Employee health—Reportable history of illness.** (1) Food employees and conditional employees shall report to the person in charge if they:

(a) Have diarrhea, vomiting, sore throat with fever, or jaundice (yellow skin or eyes), except as specified under WAC 246-215-02235;

(b) Have a lesion containing pus such as a boil or infected wound that is open or draining and is:

(i) On the hands or wrist;

(ii) On exposed portions of the arms; or

(iii) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; or

(c) Have an illness diagnosed by a health practitioner as due to an infection with:

(i) Hepatitis A virus;

(ii) *Salmonella* Typhi (Typhoid Fever);

(iii) *Shigella*; or

(iv) Enterohemorrhagic or Shiga Toxin-producing *Escherichia coli*.

(2) In addition to the reporting in subsection (1) of this section, food employees and conditional employees in a food establishment serving a highly susceptible population shall report to the person in charge if they:

(a) Have an illness diagnosed by a health practitioner as due to an infection with Norovirus or *Salmonella* other than *Salmonella* Typhi;

(b) Have consumed or prepared food implicated in a confirmed disease outbreak;

(c) Have attended or worked in a setting where there is a confirmed disease outbreak;

(d) Live in the same household as someone who works at or attended a setting where there is a confirmed disease outbreak; or

(e) Live in the same household as or have consumed food prepared by a person who is infected or ill with:

(i) Enterohemorrhagic or Shiga Toxin-producing *Escherichia coli*;

(ii) *Shigella*;

- (iii) *Salmonella* Typhi; or
- (iv) Hepatitis A virus or jaundice.

NEW SECTION

**WAC 246-215-02210 Employee health—Prohibit a conditional employee from becoming a food employee.** The person in charge shall ensure that a conditional employee who reports symptoms or a diagnosed disease as described in WAC 246-215-02205 (1) or (2)(a) does not become a food employee until they meet the requirements for the removal of restriction or exclusion in WAC 246-215-02245 and 246-215-02250. A conditional employee that reports a history of exposure to disease in WAC 246-215-02205 (2)(b) through (e) may not become a food employee in a food establishment serving a highly susceptible population until the requirements in WAC 246-215-02250 are met.

NEW SECTION

**WAC 246-215-02215 Employee health—Notify health officer.** The person in charge shall notify the local health officer and the regulatory authority, if not the same agency, when a food employee is:

- (1) Jaundiced; or
- (2) Diagnosed with an illness due to a pathogen as specified under WAC 246-215-02205 (1)(c) and (2)(a).

NEW SECTION

**WAC 246-215-02220 Employee health—Conditions of exclusion.** Except as provided in WAC 246-215-02235, the person in charge of a food establishment shall exclude any food employee who is known to have:

- (1) Diarrhea or vomiting;
- (2) Jaundice;
- (3) A diagnosed infection (symptomatic or asymptomatic) with *Salmonella* Typhi, *Shigella*, Enterohemorrhagic or Shiga Toxin-producing *Escherichia coli*, or hepatitis A virus;
- (4) A sore throat with fever or a diagnosed infection with Norovirus or *Salmonella* other than *Salmonella* Typhi, and works in a food establishment serving a highly susceptible population; or
- (5) A previous infection with *Salmonella* Typhi within the past three months without having antibiotic therapy.

NEW SECTION

**WAC 246-215-02225 Employee health—Conditions of restriction.** The person in charge of a food establishment shall restrict any food employee who is known to have:

- (1) A lesion that appears inflamed or contains pus and that is not covered;
- (2) Exposure to foodborne pathogens as described in WAC 246-215-02205 (2)(b) through (e) and works in a food establishment serving a highly susceptible population; or
- (3) A sore throat with fever.

NEW SECTION

**WAC 246-215-02230 Employee health—Aiding illness investigations.** The person in charge of a food establishment and all employees shall cooperate with the regulatory authority and the local health officer investigating:

- (1) A foodborne disease outbreak or a suspected foodborne disease outbreak; or
- (2) A food employee suspected to be infected with a disease agent that can be transmitted from a food employee through food.

NEW SECTION

**WAC 246-215-02235 Employee health—Other conditions.** A food employee with a symptom of gastrointestinal illness, such as vomiting, diarrhea, or jaundice, may work in a food establishment without special restriction, provided that the food employee furnishes written medical documentation to the regulatory authority from a health practitioner that the symptom is due to a medical condition not transmissible through food, such as Crohn's disease, irritable bowel syndrome, ulcerative colitis, or hepatitis C.

NEW SECTION

**WAC 246-215-02240 Employee health—Complying with local health officer.** The person in charge of a food establishment and food employees shall comply with orders issued by the local health officer for excluding employees from a food establishment or restricting employee activities due to a diagnosed or suspected infection by a disease agent that can be transmitted from a food employee through food until the local health officer rescinds the order.

NEW SECTION

**WAC 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis.** Except as specified under WAC 246-215-02250, the person in charge shall obtain approval from the local health officer before reinstating a food employee who was restricted or excluded based on:

- (1) The 19th edition of the *Control of Communicable Disease Manual*, published by the American Public Health Association; or
- (2) Other measures the local health officer deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information.

NEW SECTION

**WAC 246-215-02250 Employee health—Removal of exclusion or restriction based on symptoms.** The person in charge shall adhere to the following conditions when reinstating a food employee who was restricted or excluded due to:

- (1) Diarrhea or vomiting: Remove exclusion when asymptomatic for more than twenty-four hours;
- (2) Jaundice: Remove exclusion with approval of the local health officer;

(3) Sore throat with fever: Remove exclusion when asymptomatic; or

(4) Uncovered infected wound or pustular boil: Remove restriction when skin, wound, or pustular boil is properly protected by an impermeable cover and, if on the hand or wrist, with a single-use glove.

#### NEW SECTION

**WAC 246-215-02255 Employee health—Removal of exclusion or restriction based on exposure.** The person in charge shall adhere to the following conditions when reinstating a food employee who was restricted due to:

(1) Exposure to Norovirus, *Shigella* spp., or Enterohemorrhagic or Shiga Toxin-producing *Escherichia coli*: Remove restriction when more than three days since potential exposure or more than three days since household contact became asymptomatic;

(2) Exposure to *Salmonella* Typhi: Remove restriction when more than fourteen days since the last potential exposure or more than fourteen days since household contact became asymptomatic;

(3) Exposure to hepatitis A: Remove restriction when:

(a) The food employee is immune to hepatitis A virus infection because of prior illness from hepatitis A, vaccination, or IgG administration; or

(b) More than thirty days have passed since the last day the food employee was potentially exposed or since the food employee's household contact became jaundiced.

#### **Subpart C - Personal Cleanliness**

#### NEW SECTION

**WAC 246-215-02300 Hands and arms—Clean condition (2009 FDA Food Code 2-301.11).** Food employees shall keep their hands and exposed portions of their arms clean.

#### NEW SECTION

**WAC 246-215-02305 Hands and arms—Cleaning procedure (2009 FDA Food Code 2-301.12).** (1) Except as specified in subsection (4) of this section, food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a handwashing sink that is equipped as specified under WAC 246-215-05210 and Part 6, Subpart C.

(2) Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(a) Rinse under clean, running warm water;

(b) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;

(c) Rub together vigorously for at least ten to fifteen seconds while:

(i) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure; and

(ii) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;

(d) Thoroughly rinse under clean, running warm water; and

(e) Immediately follow the cleaning procedure with thorough drying using a method as specified under WAC 246-215-06310.

(3) To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.

(4) If APPROVED and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.

#### NEW SECTION

**WAC 246-215-02310 Hands and arms—When to wash (2009 FDA Food Code 2-301.14).** Food employees shall clean their hands and exposed portions of their arms as specified under WAC 246-215-02305 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

(1) After touching bare human body parts other than clean hands and clean, exposed portions of arms;

(2) After using the toilet room;

(3) After caring for or handling service animals or aquatic animals as specified under WAC 246-215-02415(2);

(4) Except as specified under WAC 246-215-02400(2), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(5) After handling soiled equipment or utensils;

(6) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(7) When switching between working with raw food and working with ready-to-eat food;

(8) Before donning gloves for working with ready-to-eat food unless a glove change is not the result of contamination; and

(9) After engaging in other activities that contaminate the hands or gloves.

#### NEW SECTION

**WAC 246-215-02315 Hands and arms—Where to wash (2009 FDA Food Code 2-301.15).** Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

#### NEW SECTION

**WAC 246-215-02320 Hands and arms—Hand antiseptics (2009 FDA Food Code 2-301.16).** (1) A hand anti-

septic used as a topical application, hand antiseptic solution used as a hand dip, or a hand antiseptic soap must:

(a) Comply with one of the following:

(i) Be an approved drug that is listed in the FDA publication *Approved Drug Products with Therapeutic Equivalence Evaluations* as an approved drug based on safety and effectiveness; or

(ii) Have active antimicrobial ingredients that are listed in the FDA monograph or OTC Health-Care Antiseptic Drug Products as an antiseptic handwash; and

(b) Comply with one of the following:

(i) Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in 21 C.F.R. 170.39 – Threshold of regulation for substances used in food contact articles; or

(ii) Comply with and be listed in:

(A) 21 C.F.R. 178 – Indirect food additives: Adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use; or

(B) 21 C.F.R. 182 – Substances generally recognized as safe, 21 C.F.R. 184 – Direct food substances affirmed as generally recognized as safe, or 21 C.F.R. 186 – Indirect food substances affirmed as generally recognized as safe for use in contact with food; and

(c) Be applied only to hands that are cleaned as specified under WAC 246-215-02305.

(2) If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the requirements specified under subsection (1)(b) of this section, use must be:

(a) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(b) Limited to situations that involve no direct contact with food by the bare hands.

(3) A hand antiseptic solution used as a hand dip must be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

#### NEW SECTION

**WAC 246-215-02325 Fingernails—Maintenance (2009 FDA Food Code 2-302.11).** (1) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(2) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails while preparing food.

#### NEW SECTION

**WAC 246-215-02330 Jewelry—Prohibition (2009 FDA Food Code 2-303.11).** Except for a single ring or wedding ring set covered by a glove in good repair, food employees may not wear jewelry on their arms or hands while preparing food.

#### NEW SECTION

**WAC 246-215-02335 Outer clothing—Clean condition (2009 FDA Food Code 2-304.11).** Food employees shall wear clean outer clothing to prevent contamination of

food, equipment, utensils, linens, and single-service and single-use articles.

### **Subpart D - Hygienic Practices**

#### NEW SECTION

**WAC 246-215-02400 Food contamination prevention—Eating, drinking, or using tobacco (2009 FDA Food Code 2-401.11).** (1) Except as specified in subsection (2) of this section, an employee may eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

(2) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

(a) The employee's hands;

(b) The container; and

(c) Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

#### NEW SECTION

**WAC 246-215-02405 Food contamination prevention—Discharges from the eyes, nose, and mouth (2009 FDA Food Code 2-401.12).** Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

#### NEW SECTION

**WAC 246-215-02410 Hair restraints—Effectiveness (2009 FDA Food Code 2-402.11).** Food employees shall wear short hair or use hair restraints such as hats, hair coverings or nets, rubber bands, or hair clips to keep their hair off the face and behind their shoulders, and clothing that covers body hair to protect exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

#### NEW SECTION

**WAC 246-215-02415 Animals—Handling prohibition (2009 FDA Food Code 2-403.11).** (1) Except as specified in subsection (2) of this section, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified under WAC 246-215-06570 (2)(b) through (e).

(2) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacean in display tanks if they wash their hands as specified under WAC 246-215-02305 and 246-215-02315.

**PART 3: FOOD****Subpart A - Characteristics**NEW SECTION

**WAC 246-215-03100 Condition—Safe, unadulterated, and honestly presented (2009 FDA Food Code 3-101.11).** Food must be safe, not adulterated, and, as specified under WAC 246-215-03605, honestly presented.

**Subpart B - Sources, Specifications, and Original Containers and Records**NEW SECTION

**WAC 246-215-03200 Sources—Compliance with food law (2009 FDA Food Code 3-201.11).** (1) Food must be obtained from sources that comply with law.

(2) Food prepared in a private home may not be used or offered for human consumption in a food establishment.

(3) Packaged food must be labeled as specified under law, including chapter 69.04 RCW; 21 C.F.R. 101 Food Labeling; 9 C.F.R. 317 Labeling, Marking Devices, and Containers; 9 C.F.R. 381 Subpart N Labeling and Containers; and as specified under WAC 246-215-03265 and 246-215-03270.

(4) Fish, other than those specified under WAC 246-215-03425(2), that are intended for consumption in raw or undercooked form and allowed as specified under WAC 246-215-03400(4) may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under WAC 246-215-03425; or if they are frozen on the premises as specified under WAC 246-215-03425 and records are retained as specified under WAC 246-215-03430.

(5) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified under WAC 246-215-03400(3) must be:

(a) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or

(b) Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and

(c) If individually cut in a food establishment:

(i) Cut from whole-muscle, intact beef that is labeled by a food processing plant as specified in (a) of this subsection or identified as specified in (b) of this subsection;

(ii) Prepared so they remain intact; and

(iii) If packaged for undercooking in a food establishment, labeled as specified in (a) of this subsection or identified as specified in (b) of this subsection.

(6) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, must be labeled to include safe handling instructions as specified in law, including 9 C.F.R. 317.2(l) and 9 C.F.R. 381.125(b).

(7) Eggs that have not been specifically treated to destroy all viable *salmonellae* must be labeled to include safe handling instructions as specified in law, including 21 C.F.R. 101.17(h).

NEW SECTION

**WAC 246-215-03205 Sources—Food in a hermetically sealed container (2009 FDA Food Code 3-201.12).** Food in a hermetically sealed container must be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

NEW SECTION

**WAC 246-215-03210 Sources—Fluid milk and milk products (2009 FDA Food Code 3-201.13).** Fluid milk and milk products must be obtained from sources that comply with Grade A Standards as specified in law.

NEW SECTION

**WAC 246-215-03215 Sources—Fish (2009 FDA Food Code 3-201.14).** (1) Fish that are received for sale or service must be:

(a) Commercially and legally caught or harvested; or

(b) Approved for sale or service.

(2) Molluscan shellfish that are recreationally caught may not be received for sale or service.

NEW SECTION

**WAC 246-215-03220 Sources—Molluscan shellfish (2009 FDA Food Code 3-201.15).** (1) Molluscan shellfish must be obtained from sources according to law and the requirements specified in the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(2) Molluscan shellfish received in interstate commerce must be from sources that are listed in the Interstate Certified Shellfish Shippers List.

NEW SECTION

**WAC 246-215-03225 Sources—Wild mushrooms.** (1) The permit holder shall obtain wild harvested mushrooms only from sources in Washington, Oregon, Idaho, California, Montana and British Columbia where each mushroom is individually identified in the fresh state.

(2) Only the following wild harvested mushroom species may be offered for sale or service in a food establishment:

(a) Hedgehog (*Hydnum repandum*, *H. umbilicatum*);

(b) Porcini/King Boletus (*Boletus edulis*);

(c) Lobster (*Hypomyces lactifluorum* growing on *Russula brevipes*);

(d) Pacific Golden Chanterelle (*Cantharellus formosus*, *C. cascadenis*, *C. cibarius* var *roseocanus*);

(e) White Chanterelle (*Cantharellus subalbidus*);

(f) Yellow Foot/Winter Chanterelle (*Craterellus tubaeformis*);

- (g) Black Trumpet (*Craterellus cornucopioides*);
- (h) Saffron milk cap (*Lactarius deliciosus*);
- (i) Coral Hydnum/Bears Tooth (*Hericium coralloides*, *H. abietis*, *H. americanum*);
- (j) Oyster (*Pleurotus populinus*, *P. pulmonarius*, *P. ostreatus*);
- (k) Cauliflower mushroom (*Sparassis crispa*);
- (l) Oregon Black Truffle (*Leucangium carthusianum*);
- (m) Oregon White Truffle (*Tuber gibbosum*, *T. oregonense*);
- (n) Blue Chanterelle (*Polyozellus multiplex*);
- (o) *Morchella* species including, but not limited to, Black Morels (*Morchella elata*) and Blonde Morels (*Morchella esculenta*);
- (p) Matsutake/Japanese Pine Mushroom (*Tricholoma magnivelare*).

(3) Wild harvested mushrooms prepared for immediate service by a food establishment must be cooked to 135°F except for those sold for home use from grocery or farmer's markets.

(4) The permit holder shall keep written documentation supplied by the mushroom identifier for any wild harvested mushrooms offered for sale or service on file for ninety days after receipt. The documentation must include:

- (a) The common name and Latin binomial name of the mushroom;
- (b) The name, original signature, business name, mailing address, e-mail and telephone number of the mushroom identifier;
- (c) The province, state, and county or counties where harvested;
- (d) The date or dates of harvest;
- (e) The date of sale to the food establishment; and
- (f) The amount of product by weight.

(5) This section does not apply to dried or fresh mushrooms that are grown, processed or packaged in a food processing plant regulated by a state or federal food regulatory authority.

#### NEW SECTION

**WAC 246-215-03230 Sources—Game animals (2009 FDA Food Code 3-201.17).** (1) If game animals are received for sale or service they must be:

- (a) Commercially raised for food and:
  - (i) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or
  - (ii) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and
  - (iii) Raised, slaughtered, and processed according to:
    - (A) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
    - (B) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;

(b) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 C.F.R. 352 Exotic Animals; Voluntary Inspection of rabbits that are "inspected and certified" in accordance with 9 C.F.R. 354 Voluntary Inspection of Rabbits and Edible Products Thereof.

(2) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 C.F.R. 17 Endangered and Threatened Wildlife and Plants.

#### NEW SECTION

**WAC 246-215-03235 Specifications for receiving—Temperature (2009 FDA Food Code 3-202.11).** (1) Except as specified in subsection (2) of this section, refrigerated, potentially hazardous food must be at a temperature of 41°F (5°C) or below when received.

(2) If a temperature other than 41°F (5°C) for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.

(3) Raw eggs must be received in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

(4) Potentially hazardous food that is cooked to a temperature and for a time specified under WAC 246-215-03400 through 246-215-03410 and received hot must be at a temperature of 135°F (57°C) or above.

(5) A food that is labeled frozen and shipped frozen by a food processing plant must be received frozen.

(6) Upon receipt, potentially hazardous food must be free of evidence of previous temperature abuse.

#### NEW SECTION

**WAC 246-215-03240 Specifications for receiving—Additives (2009 FDA Food Code 3-202.12).** Food may not contain unapproved additives or additives that exceed the amounts specified in 21 C.F.R. 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 C.F.R. 181-186, substances that exceed amounts specified in 9 C.F.R., Subpart C, Section 424.21(b) Food Ingredients and Sources of Radiation, or pesticide residues that exceed provisions specified in 40 C.F.R. 180 Tolerances for Pesticides Chemicals in Food, and exceptions.

#### NEW SECTION

**WAC 246-215-03245 Specifications for receiving—Eggs (2009 FDA Food Code 3-202.13).** Eggs must be received clean and sound and may not exceed the restricted egg tolerances for United States Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.

NEW SECTION

**WAC 246-215-03250 Specifications for receiving—Eggs and milk products, pasteurized (2009 FDA Food Code 3-202.14).** (1) Egg products must be obtained pasteurized.

(2) Fluid milk, fluid milk products, dry milk, and dry milk products must meet "Grade A pasteurized" milk standards of chapter 15.36 RCW, except "Grade A raw milk" products meeting standards of chapter 15.36 RCW may be sold in retail stores in the original container for off-premises consumption.

(3) Frozen milk products, such as ice cream, must be obtained pasteurized as specified in 21 C.F.R. 135 - Frozen Desserts.

(4) Cheese must be obtained pasteurized unless alternative procedures to pasteurization are specified in the C.F.R., such as 21 C.F.R. 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.

NEW SECTION

**WAC 246-215-03255 Specifications for receiving—Package integrity (2009 FDA Food Code 3-202.15).** Food packages must be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

NEW SECTION

**WAC 246-215-03260 Specifications for receiving—Ice (2009 FDA Food Code 3-202.16).** Ice used as a food or a cooling medium must be made from drinking water.

NEW SECTION

**WAC 246-215-03265 Specifications for receiving—Shucked shellfish, packaging and identification (2009 FDA Food Code 3-202.17).** (1) Raw shucked shellfish must be obtained in nonreturnable packages which bear a legible label that identifies the:

(a) Name, address, and certification number of the shucker, packer, or repacker of the molluscan shellfish; and

(b) The "sell by" or "best if used by" date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more.

(2) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all of the information as specified under subsection (1) of this section is subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 C.F.R. Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan Shellfish.

NEW SECTION

**WAC 246-215-03270 Specifications for receiving—Shellstock identification (2009 FDA Food Code 3-202.18).** (1) Shellstock must be obtained in containers bearing legible source identification tags or labels that are affixed by the har-

vester or dealer that deparates, ships, or reships the shellstock, as specified in the *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish*, and that list:

(a) Except as specified under subsection (3) of this section, on the harvester's tag or label, the following information in the following order:

(i) The harvester's identification number that is assigned by the shellfish control authority;

(ii) The date of harvest;

(iii) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iv) The type and quantity of shellfish; and

(v) The following statement in bold, capitalized type: **"This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days."**; and

(b) Except as specified in subsection (4) of this section, on each dealer's tag or label, the following information in the following order:

(i) The dealer's name and address, and the certification number assigned by the shellfish control authority;

(ii) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iii) The same information as specified for a harvester's tag under (a)(ii) through (iv) of this subsection; and

(iv) The following statement in bold, capitalized type: **"This tag is required to be attached until container is empty and thereafter kept on file for 90 days."**

(2) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all of the information as specified under subsection (1)(a) of this section is subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 C.F.R. Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(3) If a place is provided on the harvester's tag or label for a dealer's name, address and certification number, the dealer's information must be listed first.

(4) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subsection (1)(a)(i) and (ii) of this section, individual dealer tags or labels need not be provided.

NEW SECTION

**WAC 246-215-03275 Specifications for receiving—Shellstock, condition (2009 FDA Food Code 3-202.19).** When received by a food establishment, shellstock must be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells must be discarded.

NEW SECTION

**WAC 246-215-03280 Specifications for receiving—Juice treated (2009 FDA Food Code 3-202.110).** Prepackaged juice must:

(1) Be obtained from a processor with a HACCP system as specified in 21 C.F.R. Part 120 Hazard Analysis and Critical Control (HACCP) Systems;

(2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. Part 120.24 Process Controls.

#### NEW SECTION

**WAC 246-215-03285 Original containers and records—Molluscan shellfish, original container (2009 FDA Food Code 3-203.11).** (1) Except as specified in subsections (2), (3), and (4) of this section, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(2) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(a) The source of the shellstock on display is identified as specified under WAC 246-215-03270 and recorded as specified under WAC 246-215-03290; and

(b) The shellstock are protected from contamination.

(3) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

(a) The labeling information for the shellfish on display as specified under WAC 246-215-03265 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(b) The shellfish are protected from contamination.

(4) Shucked shellfish may be removed from the container in which they were received and repackaged in consumer self-service containers where allowed by law if:

(a) The labeling information for the shellfish is on each consumer self-service container as specified under WAC 246-215-03265 and 246-215-03610 (1) and (2)(a) through (e);

(b) The labeling information as specified under WAC 246-215-03265 is retained and correlated with the date when, or dates during which, the shellfish is sold or served;

(c) The labeling information and dates specified under (b) of this subsection are maintained for ninety days; and

(d) The shellfish are protected from contamination.

(5) Shellstock may be removed from the container in which they are received and repacked in consumer self-service containers if:

(a) Each self-service container of shellstock is plainly marked with the harvest area name, harvest area date, and original shellfish dealer's certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested, or otherwise marked with a code that can be used to link the product with tag or label information as specified under WAC 246-215-03270;

(b) The tag or label information as specified under WAC 246-215-03270 for shellstock is retained in a written or elec-

tronic log for ninety days that correlates the date when, or dates during which, the shellstock sold;

(c) The shellstock are protected from contamination; and

(d) The packaging material allows air to get to the shellfish.

#### NEW SECTION

**WAC 246-215-03290 Original containers and records—Shellstock, maintaining identification (2009 FDA Food Code 3-203.12).** (1) Except as specified under subsection (3)(b) of this section, shellstock tags or labels must remain attached to the container in which the shellstock are received until the container is empty.

(2) The date when the last shellstock from the container is sold or served must be recorded on the tag or label.

(3) The identity of the source of shellstock that are sold or served must be maintained by retaining shellstock tags or labels for ninety calendar days from the date that is recorded on the tag or label, as specified under subsection (2) of this section by:

(a) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under subsection (2) of this section; and

(b) If shellstock are removed from its tagged or labeled container:

(i) Preserving source identification by using a record-keeping system as specified under (a) of this subsection; and

(ii) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container.

#### **Subsection C - Preventing Contamination After Receiving**

#### NEW SECTION

**WAC 246-215-03300 Preventing contamination by employees—Preventing contamination from hands (2009 FDA Food Code 3-301.11).** (1) Food employees shall wash their hands as specified under WAC 246-215-02305.

(2) Except when washing fruits and vegetables as specified under WAC 246-215-03318 or as specified in subsection (4) of this section, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

(3) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(4) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

(a) The permit holder obtains prior approval from the regulatory authority;

(b) Written procedures are maintained in the food establishment and made available to the regulatory authority upon request that include:

(i) For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by the hands;

(ii) Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under WAC 246-215-05230, 246-215-05255, 246-215-05265, 246-215-06310, and 246-215-06320, are in an easily accessible location and in close proximity to the work station where bare hand contact procedure is conducted.

(c) A written employee health policy that documents how the food establishment complies with Part 2, Subpart B of this chapter.

(d) Documentation that food employees acknowledge they have received training in:

(i) The risks of contacting the specific ready-to-eat foods with bare hands;

(ii) Proper handwashing as specified under WAC 246-215-02305;

(iii) When to wash their hands as specified under WAC 246-215-02310;

(iv) Where to wash their hands as specified under WAC 246-215-02315;

(v) Proper fingernail maintenance as specified under WAC 246-215-02325;

(vi) Prohibition of jewelry as specified under WAC 246-215-02330; and

(vii) Good hygienic practices as specified under WAC 246-215-02400 and 246-215-02405.

(e) Documentation that hands are washed before food preparation and as necessary to prevent cross contamination by food employees as specified under WAC 246-215-02300, 246-215-02305, 246-215-02310, and 246-215-02315 during all hours of operation when the specific ready-to-eat foods are prepared;

(f) Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(i) Double handwashing;

(ii) Nail brushes;

(iii) A hand antiseptic after handwashing as specified under WAC 246-215-02320;

(iv) Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill; or

(v) Other control measures approved by the regulatory authority; and

(g) Documentation that corrective action is taken when (a) through (f) of this subsection are not followed.

#### NEW SECTION

**WAC 246-215-03303 Preventing contamination by employees—Preventing contamination when tasting (2009 FDA Food Code 3-301.12).** A food employee may not use a utensil more than once to taste food that is to be sold or served.

#### NEW SECTION

**WAC 246-215-03306 Preventing food and ingredient contamination—Packaged and unpackaged food—Separation, packaging, and segregation (2009 FDA Food Code**

**3-302.11).** (1) A food must be protected from cross contamination by:

(a) Except as specified in (a)(iii) of this subsection, separating raw animal foods during storage, preparation, holding and display from:

(i) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables; and

(ii) Cooked ready-to-eat food;

(iii) Frozen, commercially processed and packaged raw animal food may be stored and displayed with or above frozen, commercially processed and packaged, ready-to-eat food.

(b) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding and display by:

(i) Using separate equipment for each type; or

(ii) Arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(iii) Preparing each type of food at different times or in separate areas.

(c) Cleaning equipment and utensils as specified under WAC 246-215-04605(1) and sanitizing as specified under WAC 246-215-04710;

(d) Except as specified under WAC 246-215-03520 (2)(b) and subsection (2) of this section, storing the food in packages, covered containers, or wrappings;

(e) Cleaning hermetically sealed containers of food of visible soil before opening;

(f) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(g) Storing damaged, spoiled, or recalled food being held in the food establishment as specified under WAC 246-215-06415; and

(h) Separating fruits and vegetables, before they are washed as specified under WAC 246-215-03318 from ready-to-eat food.

(2) Subsection (1)(d) of this section does not apply to:

(a) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(b) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(c) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(d) Food being cooled as specified under WAC 246-215-03520; or

(e) Shellstock.

#### NEW SECTION

**WAC 246-215-03309 Preventing food and ingredient contamination—Food storage containers, identified with common name of food (2009 FDA Food Code 3-302.12).** Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working contain-

ers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar must be identified with the common name of the food.

#### NEW SECTION

**WAC 246-215-03312 Preventing food and ingredient contamination—Pasteurized eggs, substitute for raw eggs for certain recipes (2009 FDA Food Code 3-302.13).** Pasteurized eggs or egg products must be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not:

- (1) Cooked as specified under WAC 246-215-03400 (1)(a) or (b); or
- (2) Included in WAC 246-215-03400(4).

#### NEW SECTION

**WAC 246-215-03315 Preventing food and ingredient contamination—Protection from unapproved additives (2009 FDA Food Code 3-302.14).** (1) Food must be protected from contamination that might result from the addition of, as specified under WAC 246-215-03240:

- (a) Unsafe or unapproved food or color additives; and
  - (b) Unsafe or unapproved levels of approved foods and color additives.
- (2) A food employee may not:
- (a) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B<sub>1</sub>; or
  - (b) Serve or sell food specified under (a) of this subsection that is treated with sulfiting agents before receipt by the food establishment.

#### NEW SECTION

**WAC 246-215-03318 Preventing food and ingredient contamination—Washing fruits and vegetables (2009 FDA Food Code 3-302.15).** (1) Except as specified in subsection (2) of this section, and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables must be thoroughly rinsed under running water to remove soil and other contaminants after any soaking and before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

- (2) Raw fruits and vegetables may be washed by using chemicals as specified under WAC 246-215-07225.
- (3) For the purposes of this section, raw vegetables include fresh herbs and sprouts.

#### NEW SECTION

**WAC 246-215-03321 Preventing food and ingredient contamination—Pooling of raw eggs prohibited.** Except eggs that are used in batters or pooled immediately before cooking, raw eggs may not be pooled.

#### NEW SECTION

**WAC 246-215-03324 Preventing contamination from ice used as a coolant—Ice used as exterior coolant, prohibited as ingredient (2009 FDA Food Code 3-303.11).** After uses as a medium for cooling the exterior surfaces of food such as melons or fish, packaged food such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as a food.

#### NEW SECTION

**WAC 246-215-03327 Preventing contamination from ice used as a coolant—Storage or display of food in contact with water or ice (2009 FDA Food Code 3-303.12).** (1) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(2) Except as specified in subsections (3) and (4) of this section, food that is not packaged may not be stored in direct contact with undrained ice.

(3) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(4) Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

#### NEW SECTION

**WAC 246-215-03330 Preventing contamination from equipment, utensils, and linens—Food contact with equipment and utensils (2009 FDA Food Code 3-304.11).** Food must only contact surfaces of:

(1) Equipment and utensils that are cleaned as specified under WAC 246-215-04600 through 246-215-04650 and sanitized as specified under WAC 246-215-04700 through 246-215-04710; or

(2) Single-service articles and single-use articles.

#### NEW SECTION

**WAC 246-215-03333 Preventing contamination from equipment, utensils, and linens—In-use utensils, between-use storage (2009 FDA Food Code 3-304.12).** During pauses in food preparation or dispensing, food preparation and dispensing utensils must be stored:

(1) Except as specified under subsection (2) of this section, in the food with their handles above the top of food and the container;

(2) In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(3) On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under WAC 246-215-04605 and 246-215-04705;

(4) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(5) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not a potentially hazardous food; or

(6) In a container of water maintained at a temperature of 135°F (57°C) or greater or 41°F (5°C) or less and the container is cleaned at a frequency specified under WAC 246-215-04605 (4)(g).

#### NEW SECTION

**WAC 246-215-03336 Preventing contamination from equipment, utensils, and linens—Linens and napkins, use limitation (2009 FDA Food Code 3-304.13).** Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

#### NEW SECTION

**WAC 246-215-03339 Preventing contamination from equipment, utensils, and linens—Wiping cloths, use limitation (2009 FDA Food Code 3-304.14).** (1) Cloths that are in use for wiping food spills from tableware and carry out containers that occur as food is being served must be:

- (a) Maintained dry; and
- (b) Used for no other purpose.

(2) Cloths in-use for wiping counters and other equipment surfaces must be:

- (a) Held between uses in a chemical sanitizer solution at a concentration specified under WAC 246-215-04565; and
- (b) Laundered daily as specified under WAC 246-215-04805(4); or

(c) Dry disposable towels used in conjunction with a spray bottle of chemical sanitizer solution at a concentration specified under WAC 246-215-04565 are not required to be held in a chemical sanitizer solution as long as the towels are disposed of after each use.

(3) Cloths in-use for wiping surfaces in contact with raw animal foods must be kept separate from cloths used for other purposes.

(4) Dry wiping cloths and the chemical sanitizing solutions specified in subsection (2)(a) of this section in which wet wiping cloths are held between uses must be free of food debris and visible soil.

(5) Containers of chemical sanitizing solutions specified in subsection (2)(a) of this section in which wet wiping cloths are held between uses must be stored and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service or single-use articles.

(6) Single-use disposable sanitizer wipes must be used in accordance with EPA-approved manufacturer's label use instructions.

#### NEW SECTION

**WAC 246-215-03342 Preventing contamination from equipment, utensils, and linens—Gloves, use limita-**

**tion (2009 FDA Food Code 3-304.15).** (1) If used, single-use gloves must be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(2) Except as specified in subsection (3) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting must be used in direct contact only with food that is subsequently cooked as specified under Part 3, Subpart D of this chapter such as frozen food or a primal cut of meat.

(3) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

(4) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under Part 3, Subpart D such as frozen food or a primal cut of meat.

#### NEW SECTION

**WAC 246-215-03345 Preventing contamination from equipment, utensils, and linens—Using clean tableware for second portions and refills (2009 FDA Food Code 3-304.16).** (1) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.

(2) Except as specified in subsection (3) of this section, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

(3) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under WAC 246-215-04230 (1), (2), and (3).

#### NEW SECTION

**WAC 246-215-03348 Preventing contamination from equipment, utensils, and linens—Refilling returnables (2009 FDA Food Code 3-304.17).** (1) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.

(2) Except as specified in subsection (3) of this section, a take-home food container refilled with food that is not potentially hazardous food must be cleaned as specified under WAC 246-215-04650(2).

(3) Single service cups and personal take out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under WAC 246-215-04230 (1), (2), and (4).

NEW SECTION

**WAC 246-215-03351 Preventing contamination from the premises—Food storage (2009 FDA Food Code 3-305.11).** (1) Except as specified in subsections (2) and (3) of this section, food must be protected from contamination by storing the food:

- (a) In a clean, dry location;
  - (b) Where it is not exposed to splash, dust, or other contamination; and
  - (c) At least six inches (15 cm) above the floor.
- (2) Food in packages and working containers may be stored less than six inches (15 cm) above the floor on case lot handling equipment as specified under WAC 246-215-04268.

(3) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

NEW SECTION

**WAC 246-215-03354 Preventing contamination from the premises—Food storage, prohibited areas (2009 FDA Food Code 3-305.12).** Food may not be stored:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In dressing rooms;
- (4) In garbage rooms;
- (5) In mechanical rooms;
- (6) Under sewer lines that are not shielded to intercept potential drips;
- (7) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (8) Under open stairwells; or
- (9) Under other sources of contamination.

NEW SECTION

**WAC 246-215-03357 Preventing contamination from the premises—Vended potentially hazardous food, original container (2009 FDA Food Code 3-305.13).** Potentially hazardous food dispensed through a vending machine must be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

NEW SECTION

**WAC 246-215-03360 Preventing contamination from the premises—Food preparation (2009 FDA Food Code 3-305.14).** During preparation, food that is not packaged must be protected from environmental sources of contamination.

NEW SECTION

**WAC 246-215-03363 Preventing contamination by consumers—Food display (2009 FDA Food Code 3-306.11).** (1) Except for nuts in the shell and whole raw fruits

and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display must be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means;

(2) If packaged for consumer self-service, hard crusted breads such as baguettes must be completely covered and may be open at one end.

NEW SECTION

**WAC 246-215-03366 Preventing contamination by consumers—Condiments, protection (2009 FDA Food Code 3-306.12).** (1) Condiments must be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(2) Condiments at a vending machine location must be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

NEW SECTION

**WAC 246-215-03369 Preventing contamination by consumers—Consumer self-service operations (2009 FDA Food Code 3-306.13).** (1) Raw animal food such as beef, lamb, pork, and fish that is not packaged may not be offered for consumer self-service. This subsection does not apply to:

(a) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;

(b) Ready-to-cook individual portions for cooking and immediate consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or

(c) Raw, frozen shrimp, lobster, finfish, calamari, or adductor muscle of scallop; or frozen, breaded seafood.

(2) Consumer self-service operations for ready-to-eat foods must be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(3) Consumer self-service operations such as buffets and salad bars must be monitored by food employees trained in safe operating procedures.

(4) Containers for display and service of ready-to-eat, unpackaged, bulk foods for consumer self-service must have a consumer access point no less than 30 inches above floor level, except for approved containers of liquids.

NEW SECTION

**WAC 246-215-03372 Preventing contamination by consumers—Returned food and reservice of food (2009 FDA Food Code 3-306.14).** (1) Except as specified in subsection (2) of this section, after being served or sold and in the possession of a consumer, food that is unused or returned

by the consumer may not be offered as food for human consumption.

(2) Except as specified under WAC 246-215-03800(7), a container of food that is not potentially hazardous food may be re-served from one consumer to another if:

(a) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(b) The food, such as crackers, salt, or pepper, is in an opened original package and is maintained in sound condition.

**NEW SECTION**

**WAC 246-215-03375 Preventing contamination by consumers—Miscellaneous sources of contamination (2009 FDA Food Code 3-307.11).** Food must be protected from contamination that might result from a factor or source not specified under Part 3, Subparts A through F.

**Subpart D - Destruction of Organisms of Public Health Concern**

**NEW SECTION**

**WAC 246-215-03400 Cooking—Raw animal foods (2009 FDA Food Code 3-401.11).** (1) Except as specified under subsections (2), (3), and (4) of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, must be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(a) 145°F (63°C) or above for fifteen seconds for:

(i) Raw eggs that are broken and prepared in response to a consumer's order and for immediate service; and

(ii) Except as specified under (b) and (c) of this subsection and subsections (2) and (3) of this section, fish and meat, including game animals commercially raised for food as specified under WAC 246-215-03230 (1)(a) and game animals under a voluntary inspection program as specified under WAC 246-215-03230 (1)(b);

(b) 155°F (68°C) for fifteen seconds or a temperature and time combination specified in the following chart, provided that food employees monitor both temperature and time under an approved plan, for ratites; mechanically tenderized and injected meats; and comminuted fish, meat, game animals commercially raised for food as specified under WAC 246-215-03230 (1)(a), game animals under a voluntary inspection program as specified under WAC 246-215-03230 (1)(a); and raw eggs that are not prepared as specified under (a)(i) of this subsection; or

**Table 3-1: Minimum Temperatures**

Temperature °F (°C)	Time
145 (63)	3 minutes
150 (66)	1 minute
158 (70)	< 1 second (instantaneous)

(c) 165°F (74°C) or above for 15 seconds for poultry; baluts; wild game animals; stuffed fish; stuffed meat; stuffed pasta; stuffed ratites; or stuffing containing fish, meat, poultry, or ratites.

(2) Whole meat roasts, including beef, corned beef, lamb, pork, and cured pork roasts such as ham, must be cooked:

(a) In an oven that is preheated to the temperature specified for the roast's weight in Table 3-2 and that is held at that temperature; and

**Table 3-2: Oven Temperature Based on Weight**

Oven Type	Less Than 10 lbs. (4.5 kg)	10 lbs. (4.5 kg) or More
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity <sup>1</sup>	250°F (121°C) or less	250°F (121°C) or less

<sup>1</sup> Relative humidity greater than 90% for at least one hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

(b) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

**Table 3-3: Temperature and Holding Time**

Temperature °F (°C)	Time in Minutes <sup>1</sup>	Temperature °F (°C)	Time in Seconds <sup>1</sup>
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

<sup>1</sup> Holding time may include postoven heat rise.

(3) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(a) The food establishment serves a population that is not a highly susceptible population;

(b) The steak is labeled to indicate that it meets the definition of whole-muscle, intact beef as specified under WAC 246-215-03200(5); and

(c) The steak is cooked on both the top and the bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

(4) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked

eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection (3) of this section, may be served or offered for sale in a ready-to-eat form if:

(a) As specified under WAC 246-215-03800 (3)(a) and (b), the food establishment serves a population that is not a highly susceptible population;

(b) The food is not offered from a children's menu or children's section of any menu; and

(c) The consumer is informed as specified under WAC 246-215-03620 that to ensure its safety, the food should be cooked as specified under subsection (1) or (2) of this section; or

(d) The regulatory authority grants a variance from subsection (1) or (2) of this section as specified under WAC 246-215-08110 based on a HACCP plan that:

(i) Is submitted by the permit holder and approved as specified under WAC 246-215-08115;

(ii) Documents scientific data or other information showing that a lesser time and temperature regimen results in safe food; and

(iii) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

#### NEW SECTION

**WAC 246-215-03405 Cooking—Microwave cooking (2009 FDA Food Code 3-401.12).** Raw animal foods cooked in a microwave oven must be:

(1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) Covered to retain surface moisture;

(3) Heated to a temperature of at least 165°F (74°C) in all parts of the food; and

(4) Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

#### NEW SECTION

**WAC 246-215-03410 Cooking—Plant food cooking for hot holding (2009 FDA Food Code 3-401.13).** Fruits and vegetables that are cooked for hot holding must be cooked to a temperature of 135°F (57°C).

#### NEW SECTION

**WAC 246-215-03415 Cooking—Noncontinuous cooking of raw animal foods (2009 FDA Food Code 3-401.14).** Except as specified in subsection (7) of this section, raw animal foods that are cooked using a noncontinuous cooking process must be:

(1) Subject to an initial heating process that is no longer than sixty minutes in duration;

(2) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked, potentially hazardous food under WAC 246-215-03515(1);

(3) After cooling, held frozen or cold, as specified for potentially hazardous food under WAC 246-215-03525 (1)(b);

(4) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least 165°F (74°C) for fifteen seconds;

(5) Cooled according to the time and temperature parameters specified for cooked potentially hazardous food under WAC 246-215-03515(1) if not either hot held as specified under WAC 246-215-03525(1), served immediately, or held using time as a public health control as specified under WAC 246-215-03530 after complete cooking;

(6) Prepared and stored according to written procedures that:

(a) Have obtained prior approval from the regulatory authority;

(b) Are maintained in the food establishment and are available to the regulatory authority upon request;

(c) Describe how the requirements specified under subsections (1) through (5) of this section are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;

(d) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under subsection (4) of this section prior to being offered for sale or service; and

(e) Describe how the foods, after initial heating but prior to cooking as specified under subsection (4) of this section, are to be separated from ready-to-eat foods as specified under WAC 246-215-03306(1); and

(7) Raw animal foods that are grill marked must be:

(a) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food under WAC 246-215-03515(1);

(b) Marked or otherwise identified as foods that must be cooked;

(c) Separated from ready-to-eat foods as specified under WAC 246-215-03306(1);

(d) Prior to sale or service, cooked to the temperatures specified under WAC 246-215-03400;

(e) Hot held as specified under WAC 246-215-03525(1), served immediately, or held using time as a public health control as specified under WAC 246-215-03530 after complete cooking; and

(f) Disposed if left over after cooking and hot holding.

#### NEW SECTION

**WAC 246-215-03420 Cooking—Unattended cooking and hot holding.** Unattended cooking and unattended hot holding are prohibited without continuous temperature monitoring under an approved plan.

#### NEW SECTION

**WAC 246-215-03425 Freezing—Parasite destruction (2009 FDA Food Code 3-402.11).** (1) Except as specified in subsection (2) of this section, before service or sale in ready-to-eat form, raw, raw marinated, partially cooked, or marinated partially cooked fish must be:

(a) Frozen and stored at a temperature of -4°F (-20°C) or below for one hundred sixty-eight hours (seven days) in a freezer; or

(b) Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) for fifteen hours; or

(c) Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of twenty-four hours.

(2) Subsection (1) of this section does not apply to:

(a) Molluscan shellfish;

(b) Tuna of the species *Thunnus alalunga*, *Thunnus albacores* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern); or

(c) Aquacultured fish, such as salmon, that:

(i) If raised in open water, are raised in net pens; or

(ii) Are raised in land-based operations such as ponds or tanks; and

(iii) Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.

(3) Fish eggs that have been removed from the skein and rinsed.

#### NEW SECTION

**WAC 246-215-03430 Freezing—Records, creation and retention (2009 FDA Food Code 3-402.12).** (1) Except as specified under WAC 246-215-03425(2) and subsection (2) of this section, if raw, raw marinated, partially cooked, or marinated partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish.

(2) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under Section 3-402.11 may substitute for the records specified under subsection (1) of this section.

(3) If raw, raw marinated, partially cooked, or marinated partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified under WAC 246-215-03425 (2)(c), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified under WAC 246-215-03425 (2)(c), must be obtained by the person in charge and retained in the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish.

#### NEW SECTION

**WAC 246-215-03435 Reheating—Preparation for immediate service (2009 FDA Food Code 3-403.10).** Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

#### NEW SECTION

**WAC 246-215-03440 Reheating—Reheating for hot holding (2009 FDA Food Code 3-403.11).** (1) Except as specified under subsections (2), (3), and (5) of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) for fifteen seconds.

(2) Except as specified under subsection (3) of this section, potentially hazardous food reheated in a microwave oven for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.

(3) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, must be heated to a temperature of at least 135°F (57°C) for hot holding.

(4) Reheating for hot holding as specified under subsections (1) through (3) of this section must be done rapidly and the time the food is between 41°F (5°C) and the temperature specified under subsections (1) through (3) of this section may not exceed two hours.

(5) Remaining unsliced portions of meat roasts that are cooked as specified under WAC 246-215-03400(2) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under WAC 246-215-03400(2).

#### NEW SECTION

**WAC 246-215-03445 Other methods—Treating juice (2009 FDA Food Code 3-404.11).** Juice packaged in a food establishment must be:

(1) Treated under a HACCP plan as specified under WAC 246-215-08215 (2) through (5) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; or

(2) Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:

(a) As specified under WAC 246-215-03610; and

(b) As specified in 21 C.F.R. 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "**Warning: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.**"

### Subpart E - Limitation of Growth of Organisms of Public Health Concern

#### NEW SECTION

**WAC 246-215-03500 Temperature and time control—Frozen food (2009 FDA Food Code 3-501.11).** Stored frozen foods must be maintained frozen.

#### NEW SECTION

**WAC 246-215-03505 Temperature and time control—Potentially hazardous food, slacking (2009 FDA Food Code 3-501.12).** Frozen potentially hazardous food that is slacked to moderate the temperature must be held:

- (1) Under refrigeration that maintains the food temperature at 41°F (5°C) for less; or
- (2) At any temperature if the food remains frozen.

#### NEW SECTION

**WAC 246-215-03510 Temperature and time control—Thawing. (2009 FDA Food Code 3-501.13).** Except as specified in subsection (4) of this section, potentially hazardous food must be thawed:

- (1) Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
- (2) Completely submerged under running water:
  - (a) At a water temperature of 70°F (21°C) or below;
  - (b) With sufficient water velocity to agitate and float off loose particles in an overflow; and
  - (c) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C); or
  - (d) For a period of time that does not allow thawed portions of raw animal food requiring cooking as specified under WAC 246-215-03400 (1) or (2) to be above 41°F (5°C) for more than four hours including:
    - (i) The time the food is exposed to the running water and the time needed for preparation for cooking; or
    - (ii) The time it takes under refrigeration to lower the food temperature to 41°F (5°C);
- (3) As part of a cooking process if the food that is frozen is:
  - (a) Cooked as specified under WAC 246-215-03400 (1) or (2) or 246-215-03405; or
  - (b) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
  - (4) Using any procedure if a portion of frozen, ready-to-eat food is thawed and prepared for immediate service in response to an individual customer's order.

#### NEW SECTION

**WAC 246-215-03515 Temperature and time control—Cooling (2009 FDA Food Code 3-501.14).** (1) Cooked potentially hazardous food must be cooled:

- (a) Within two hours from 135°F (57°C) to 70°F (21°C);
- (b) Within a total of six hours from 135°F (57°C) to 41°F (5°C) or less; or

(c) As alternatives to the cooling provisions of (a) and (b) of this subsection, the following rapid cooling procedures are allowed:

(i) Continuous cooling of foods in a shallow layer of two inches or less, uncovered, protected from cross contamination, in cooling equipment maintaining an ambient air temperature of 41°F (5°C) or less; or

(ii) Continuous cooling of intact pieces of meat that is not comminuted and is no greater than four inches thick, uncovered, unwrapped, not touching other pieces of food, protected from cross contamination, in cooling equipment maintaining an ambient temperature of 41°F (5°C) or less.

(2) Potentially hazardous food must be cooled within four hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(3) Except as specified in subsection (4) of this section, a potentially hazardous food received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified under WAC 246-215-03235(2), must be cooled within four hours to 41°F (5°C) or less.

(4) Raw eggs must be received as specified under WAC 246-215-03235(3) and immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

#### NEW SECTION

**WAC 246-215-03520 Temperature and time control—Cooling methods (2009 FDA Food Code 3-501.15).**

(1) Cooling must be accomplished in accordance with the time and temperature requirements specified under WAC 246-215-03515 by using one or more of the following methods based on the type of food being cooled:

- (a) Placing the food in shallow pans;
  - (b) Separating the food into smaller or thinner portions;
  - (c) Using rapid cooling equipment;
  - (d) Stirring the food in a container placed in an ice water bath;
  - (e) Using containers that facilitate heat transfer;
  - (f) Adding ice as an ingredient; or
  - (g) Other effective methods.
- (2) When placed in cooling or cold holding equipment, food containers in which food is being cooled must be:
- (a) Arranged in the equipment to provide maximum heat transfer through the container walls; and
  - (b) Loosely covered, or uncovered if using the alternative cooling provisions in WAC 246-215-03515 (1)(c) and if protected from overhead contamination as specified under WAC 246-215-03351 (1)(b), during the cooling period to facilitate heat transfer from the surface of the food.

#### NEW SECTION

**WAC 246-215-03525 Temperature and time control—Potentially hazardous food, hot and cold holding (2009 FDA Food Code 3-501.16).** (1) Except during active preparation for up to two hours, cooking, or cooling or when time is used as the public health control as specified under

WAC 246-215-03530, and except as specified in subsections (2) and (3) of this section, potentially hazardous food must be maintained:

(a) At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under WAC 246-215-03400(2) or reheated as specified under WAC 246-215-03440 may be held at a temperature of 130°F (54°C) or above; or

(b) At 41°F (5°C) or less.

(2) Eggs that have not been treated to destroy all viable salmonellae must be stored in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

(3) Potentially hazardous food in a homogenous liquid form may be maintained outside the temperature control requirements, as specified under subsection (1) of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified under WAC 246-215-04230(5).

#### NEW SECTION

**WAC 246-215-03530 Temperature and time control—Time as a public health control (2009 FDA Food Code 3-501.19).** (1) Except as specified under subsection (3) of this section, if time without temperature control is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for sale or service for immediate consumption:

(a) Written procedures must be prepared in advance, maintained in the food establishment and made available to the regulatory authority upon request that specify:

(i) Methods of compliance with subsections (2)(a) through (c) of this section; and

(ii) Methods of compliance with WAC 246-215-03515 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(2) If time without temperature control is used as the public health control up to a maximum of four hours:

(a) The food must have an internal temperature of 41°F (5°C) or less when removed from cold holding temperature control, or 135°F (57°C) or greater when removed from hot holding temperature control;

(b) The food must be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

(c) The food must be cooked and served, served at any temperature if ready-to-eat or discarded, within four hours from the point in time when the food is removed from temperature control; and

(d) The food in unmarked containers or packages, or marked to exceed a four-hour limit, must be discarded.

(3) A food establishment that serves a highly susceptible population may not use time as specified under subsections (1) and (2) of this section as the public health control for raw eggs.

#### NEW SECTION

**WAC 246-215-03535 Specialized processing methods—Variance requirement (2009 FDA Food Code 3-502.11).** A food establishment shall obtain a variance from the regulatory authority as specified under WAC 246-215-08110 and 246-215-08115 before:

(1) Smoking food as a method of food preservation rather than as a method of flavor enhancement;

(2) Curing food;

(3) Using food additives or adding components such as vinegar:

(a) As a method of food preservation rather than as a method of flavor enhancement; or

(b) To render a food so that it is not potentially hazardous food;

(4) Packaging food using a reduced oxygen packaging method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under WAC 246-215-03540;

(5) Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;

(6) Custom processing animals that are for personal use as food and not for sale or service in a food establishment;

(7) Preparing food by another method that is determined by the regulatory authority to require a variance; or

(8) Sprouting seeds or beans.

#### NEW SECTION

**WAC 246-215-03540 Specialized processing methods—Reduced oxygen packaging without a variance, criteria (2009 FDA Food Code 3-502.12).** (1) Except for a food establishment that obtains a variance as specified under WAC 246-215-03535, a food establishment that packages potentially hazardous food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.

(2) A food establishment that packages potentially hazardous food using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under WAC 246-215-08215(4) and that:

(a) Identifies the food to be packaged;

(b) Except as specified under subsections (3) through (5) of this section, requires that the packaged food must be maintained at 41°F (5°C) or less and meet at least one of the following requirements:

(i) Has an  $A_w$  of 0.91 or less;

(ii) Has a pH of 4.6 or less;

(iii) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 C.F.R. 424.21, Use of Food Ingredients and Sources of Radiation, and is received in an intact package; or

(iv) Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;

(c) Describes how the package must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(i) Maintain the food at 41°F (5°C) or below; and  
 (ii) Discard the food if within fourteen calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

(d) Limits the refrigerated shelf life to no more than fourteen calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first:

(e) Includes operational procedures that:

(i) Prohibit contacting ready-to-eat food with bare hands as specified under WAC 246-215-03300(2);

(ii) Identify a designated work area and the method by which:

(A) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination; and

(B) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation; and

(iii) Delineate cleaning and sanitization procedures for food contact surfaces; and

(f) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(i) Concepts required for a safe operation;

(ii) Equipment and facilities; and

(iii) Procedures specified under (e) of this subsection and WAC 246-215-08215(4).

(3) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

(4) Except as specified under subsection (3) of this section, a food establishment that packages food using a cook-chill or sous vide process shall:

(a) Implement a HACCP plan that contains the information as specified under WAC 246-215-08215(4);

(b) Ensure the food is:

(i) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer;

(ii) Cooked to heat all parts of the food to a temperature and for a time as specified under WAC 246-215-03400;

(iii) Protected from contamination before and after cooking as specified under Part 3, Subpart C and D;

(iv) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below 135°F (57°C);

(v) Cooled to 41°F (5°C) in the sealed package or bag as specified under WAC 246-215-03515 and subsequently:

(A) Cooled to 34°F (1°C) within forty-eight hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within thirty days after the date of packaging;

(B) Cooled to 34°F (1°C) within forty-eight hours of reaching 41°F (5°C), removed from refrigeration equipment that maintains a 34°F (1°C) food temperature and then held at

41°F (5°C) or less for no more than seventy-two hours, at which time the food must be consumed or discarded;

(C) Cooled to 38°F (3°C) or less within twenty-four hours of reaching 41°F (5°C) and held there for no more than seventy-two hours from packaging, at which time the food must be consumed or discarded;

(D) Held frozen with no shelf life restriction while frozen until consumed or used.

(vi) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;

(vii) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation; and

(viii) Labeled with the product name and the date packaged; and

(c) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:

(i) Make such records available to the regulatory authority upon request; and

(ii) Hold such records for at least six months after the last date the product was sold or served.

(d) Implement written operational procedures as specified under subsection (2)(e) of this section and a training program as specified under subsection (2)(f) of this section.

(5) A food establishment that packages cheese using a reduced oxygen packaging method shall:

(a) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 C.F.R. 133.150 Hard cheeses, 21 C.F.R. 133.169 Pasteurized process cheese or 21 C.F.R. 133.187 Semisoft cheeses;

(b) Have a HACCP plan that contains the information specified under WAC 246-215-08215(4) and as specified under subsection (2)(a), (c)(i), (e), and (f) of this section;

(c) Labels the package on the principal display panel with a "use by" date that does not exceed thirty days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever comes first; and

(d) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within thirty calendar days of its packaging.

### **Subpart F - Food Identity, Presentation, and On-Premises Labeling**

#### NEW SECTION

**WAC 246-215-03600 Accurate representation—Standards of identity (2009 FDA Food Code 3-601.11).** Packaged food must comply with standard of identity requirements in 21 C.F.R. 131-169 and 9 C.F.R. 319 Definitions and Standards of Identity or Composition, and the general requirements in 21 C.F.R. 130 -Food Standards: General and 9 C.F.R. 319 Subpart A -General.

NEW SECTION

**WAC 246-215-03605 Accurate representation—Honestly presented (2009 FDA Food Code 3-601.12).** (1) Food must be offered for human consumption in a way that does not mislead or misinform the consumer.

(2) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

NEW SECTION

**WAC 246-215-03610 Labeling—Food labels (2009 FDA Food Code 3-602.11).** (1) Food packaged in a food establishment must be labeled as specified in law, including chapter 69.04 RCW; 21 C.F.R. 101 - Food Labeling; and 9 C.F.R. 317 -Labeling, Marking Devices, and Containers.

(2) Label information must include:

(a) The common name of the food, or absent a common name, and adequately descriptive identity statement;

(b) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(c) An accurate declaration of the quantity of contents;

(d) The name and place of business of the manufacturer, packer, or distributor;

(e) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or unusual name of the respective ingredient;

(f) Except as exempted in the Federal Food, Drug, and Cosmetic Act Section 403 (Q)(3) through (5), nutrition labeling as specified in 21 C.F.R. 101 - Food Labeling and 9 C.F.R. 317 Subpart B Nutrition Labeling; and

(g) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

(3) Bulk food that is available for consumer self-dispensing must be prominently labeled with the following information in plain view of the consumer:

(a) The manufacturer's or processor's label that was provided with the food; or

(b) A card, sign, or other method of notification that includes the information specified under subsection (2)(a), (b), and (e) of this section.

(4) Bulk, foods that are not packaged such as bakery products and foods that are not packaged and portioned to consumer specification need not be labeled if:

(a) A health, nutrient content, or other claim is not made;

(b) There are no state or local laws requiring labeling; and

(c) The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

(5) Whenever unpasteurized milk and foods containing unpasteurized milk are offered for sale at a food establish-

ment, except hard or semi-soft raw milk cheeses properly fermented and aged for a minimum of sixty days in compliance with 21 C.F.R. Part 133, the permit holder and person in charge shall ensure that:

(a) The product is conspicuously labeled "*raw milk*" or "*contains raw milk*"; and

(b) A sign is posted in a conspicuous manner near the product stating: "*Warning: Raw milk or foods prepared from raw milk may be contaminated with dangerous bacteria capable of causing severe illness. Contact your local health agency for advice or to report a suspected illness.*"

(6) The permit holder and person in charge shall ensure that required information contained on food labels is in the English language, except that duplicate labeling in other languages is allowed.

NEW SECTION

**WAC 246-215-03615 Labeling—Other forms of information (2009 FDA Food Code 3-602.12).** (1) If required by law, consumer warnings must be provided.

(2) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

NEW SECTION

**WAC 246-215-03620 Consumer advisory—Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens (2009 FDA Food Code 3-603.11).** (1) Except as specified under WAC 246-215-03400 (3) and (4)(d) and 246-215-03800(3) if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in a ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections (2) and (3) of this section using brochures, deli case menu advisories, label statements, table tents, placards, or other effective written means.

(2) Disclosure must include:

(a) A description of the animal-derived foods such as "oysters on the half shell (raw oysters)," "raw egg Caesar salad," and "hamburgers (can be cooked to order)"; or

(b) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked and contain (or might contain) raw or undercooked ingredients.

(3) Reminder must include asterisking the animal-derived foods requiring disclosure to a footnote that states:

(a) "*Regarding the safety of these items, written information is available upon request;*"

(b) "*Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs might increase your risk of food-borne illness;*" or

(c) "*Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs might increase your risk of food-borne illness, especially if you have certain medical conditions.*"

**Subpart G - Contaminated Food**NEW SECTION

**WAC 246-215-03700 Disposition—Discarding or reconditioning unsafe, adulterated, or contaminated food (2009 FDA Food Code 3-701.11).** (1) A food that is unsafe, adulterated, or not honestly presented as specified under WAC 246-215-03100 must be discarded or reconditioned according to an approved procedure.

(2) Food that is not from an approved source as specified under WAC 246-215-03200 through 246-215-03230 must be discarded.

(3) Ready-to-eat food that might have been contaminated by an employee who has been restricted or excluded as specified under WAC 246-215-02220 and 246-215-02225 must be discarded.

(4) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means must be discarded.

NEW SECTION

**WAC 246-215-03705 Disposition—Examination, hold orders, condemnation, and destruction of food.** (1) The permit holder or person in charge of a food establishment in which food has been improperly handled, stored, or prepared shall:

(a) Voluntarily destroy the questionable food; or  
 (b) Contact the regulatory authority to determine if the food is safe for human consumption.

(2) The permit holder or person in charge of a food establishment shall denature or destroy any food if the regulatory authority determines the food presents an imminent or actual health hazard.

(3) The regulatory authority may examine or collect samples of food as often as necessary for enforcement of these regulations.

(4) The regulatory authority may, after notice to the permit holder or person in charge, place a written hold order on any suspect food until a determination on its safety can be made and shall:

(a) Tag;  
 (b) Label; or  
 (c) Otherwise identify any food subject to the hold order and complete a form approved by the department of health for all suspect food.

(5) The hold order issued by the regulatory authority must include:

(a) Instructions for filing a written request for a hearing with the regulatory authority within ten calendar days; and

(b) Notification that if a hearing is not requested in accordance with the instructions provided in the hold order, and the regulatory authority does not vacate the hold order, the food must be destroyed under the supervision of a representative of the regulatory authority.

(6) When food is subject to a hold order by the regulatory authority, the permit holder and person in charge are prohibited from:

- (a) Using;
- (b) Serving; or
- (c) Moving the food from the food establishment.

(7) The regulatory authority may allow storage of food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and must be accomplished by the permit holder or person in charge of the food establishment.

(8) Based upon evidence provided at the hearing, the regulatory authority may either:

- (a) Vacate the hold order; or
- (b) Direct the permit holder or person in charge of the food establishment by written order to:
  - (i) Denature or destroy such food; or
  - (ii) Bring the food into compliance with the provisions of these regulations.

**Subsection H - Special Requirements for Highly Susceptible Populations**NEW SECTION

**WAC 246-215-03800 Additional safeguards—Pasteurized foods, prohibited reservice, and prohibited food (2009 FDA Food Code 3-801.11).** In a food establishment that serves a highly susceptible population:

(1) The following requirements apply to juice:

(a) For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;

(b) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 C.F.R., Section 101.17(g) Food Labeling, warning, notice and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice that bears a warning label as specified under WAC 246-215-03445(2) may not be served or offered for sale; and

(c) Juice that is prepared on the premises for service or sale in a ready-to-eat form and not packaged must be processed under a HACCP plan that contains the information specified under WAC 246-215-08215 (2) through (5) and as specified in 21 C.F.R. Part 120 - Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction, 120.24 Process controls.

(2) Pasteurized eggs or egg products must be substituted for raw eggs in the preparation of:

(a) Foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and

(b) Except as specified in subsection (6) of this section, recipes in which more than one egg is broken and the eggs are combined;

(3) The following foods may not be served or offered for sale in a ready-to-eat form:

(a) Raw animal foods such as raw fish, raw marinated fish, raw molluscan shellfish, and steak tartare;

(b) A partially cooked animal food such as lightly cooked fish, rare meat, soft cooked eggs that are made from raw eggs, and meringue; and

(c) Raw seed sprouts.

(4) Food employees may not contact ready-to-eat food as specified under WAC 246-215-03300 (2) and (4).

(5) Time only, as the public health control as specified under WAC 246-215-03530(4), may not be used for raw eggs.

(6) Subsection (2)(b) of this section does not apply if:

(a) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under WAC 246-215-03400 (1)(a), and served immediately such as an omelet, souffle, or scrambled eggs;

(b) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

(c) The preparation of the food is conducted under a HACCP plan that:

(i) Identifies the food to be prepared;

(ii) Prohibits contacting ready-to-eat food with bare hands;

(iii) Includes specifications and practices that ensure:

(A) *Salmonella Enteritidis* growth is controlled before and after cooking; and

(B) *Salmonella Enteritidis* is destroyed by cooking the eggs according to the temperature and time specified under WAC 246-215-03400 (1)(b);

(iv) Contains the information specified under WAC 246-215-08215(4) including procedures that:

(A) Control cross contamination of ready-to-eat food with raw eggs; and

(B) Delineate cleaning and sanitizing procedures for food-contact surfaces; and

(v) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

(7) Except as specified in subsection (8) of this section, food may be re-served as specified under WAC 246-215-03372 (2)(a) and (b).

(8) Food may not be re-served under the following conditions:

(a) Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environmental isolation may not be re-served to others outside.

(b) Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environmental isolation.

**PART 4: EQUIPMENT, UTENSILS AND LINENS**

**Subpart A - Materials for Construction and Repair**

NEW SECTION

**WAC 246-215-04100 Multiuse—Characteristics (2009 FDA Food Code 4-101.11).** Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious sub-

stances or impart colors, odors, or tastes to food and under normal use conditions must be:

(1) Safe;

(2) Durable, corrosion-resistant, and nonabsorbent;

(3) Sufficient in weight and thickness to withstand repeated warewashing;

(4) Finished to have a smooth, easily cleanable surface; and

(5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

NEW SECTION

**WAC 246-215-04105 Multiuse—Cast iron, use limitation (2009 FDA Food Code 4-101.12).** (1) Except as specified in subsections (2) and (3) of this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

(2) Cast iron may be used as a surface for cooking.

(3) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

NEW SECTION

**WAC 246-215-04110 Multiuse—Lead in ceramic, china, and crystal utensils, use limitation (2009 FDA Food Code 4-101.13).** (1) Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food must be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

Utensil Category	Description	Maximum Lead mg/L
Hot Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollow-ware (excluding pitchers)	Bowls ≥ 1.1 L (1.16 Quart)	1
Small Hollow-ware (excluding cups and mugs)	Bowls < 1.1 L (1.16 Quart)	2.0
Flat Tableware	Plates, Saucers	3.0

(2) Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.

(3) Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

NEW SECTION

**WAC 246-215-04115 Multiuse—Copper, use limitation (2009 FDA Food Code 4-101.14).** (1) Except as specified in subsection (2) of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below six such as vinegar, fruit juice, or wine or

for a fitting or tubing installed between a backflow prevention device and a carbonator.

(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation steps of a beer brewing operation such as a brewpub or microbrewery.

#### NEW SECTION

**WAC 246-215-04120 Multiuse—Galvanized metal, use limitation (2009 FDA Food Code 4-101.15).** Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

#### NEW SECTION

**WAC 246-215-04125 Multiuse—Sponges, use limitation (2009 FDA Food Code 4-101.16).** Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

#### NEW SECTION

**WAC 246-215-04130 Multiuse—Wood, use limitation (2009 FDA Food Code 4-101.17).** (1) Except as specified in subsections (2), (3), and (4) of this section, wood and wood wicker may not be used as a food-contact surface.

(2) Hard maple or an equivalently hard, close-grained wood may be used for:

(a) Cutting boards; cutting blocks; baker's tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(b) Wooden paddles used in confectionary operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

(3) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(4) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(a) Untreated wood containers; or

(b) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 C.F.R. 178.3800 Preservatives for wood.

#### NEW SECTION

**WAC 246-215-04135 Multiuse—Nonstick coatings, use limitation (2009 FDA Food Code 4-101.18).** Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating must be used with nonscoring or nonscratching utensils and cleaning aids.

#### NEW SECTION

**WAC 246-215-04140 Multiuse—Nonfood-contact surfaces (2009 FDA Food Code 4-101.19).** Nonfood-contact surfaces of equipment that are exposed to splash, spill-

age, or other food soiling or that require frequent cleaning must be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

#### NEW SECTION

**WAC 246-215-04145 Single-service and single use—Characteristics (2009 FDA Food Code 4-102.11).** Materials that are used to make single-service and single-use articles:

(1) May not:

(a) Allow the migration of deleterious substances; or  
(b) Impart colors, odors, or tastes to food; and

(2) Must be:

(a) Safe; and  
(b) Clean.

### **Subpart B - Design and Construction**

#### NEW SECTION

**WAC 246-215-04200 Durability and strength—Equipment and utensils (2009 FDA Food Code 4-201.11).** Equipment and utensils must be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

#### NEW SECTION

**WAC 246-215-04202 Durability and strength—Food temperature measuring devices (2009 FDA Food Code 4-201.12).** Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatter-proof coating such as candy thermometers may be used.

#### NEW SECTION

**WAC 246-215-04204 Cleanability—Food-contact surfaces (2009 FDA Food Code 4-202.11).** (1) Multiuse food-contact surfaces must be:

(a) Smooth;

(b) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;

(c) Free of sharp internal angles, corners, and crevices;

(d) Finished to have smooth welds and joints; and

(e) Except as specified in subsection (2) of this section, accessible for cleaning and inspection by one of the following methods:

(i) Without being disassembled;

(ii) By disassembling without the use of tools; or

(iii) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-ended wrenches, and Allen wrenches.

(2) Subsection (1)(e) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.

NEW SECTION

**WAC 246-215-04206 Cleanability—CIP equipment (2009 FDA Food Code 4-202.12).** (1) CIP equipment must meet the characteristics specified under WAC 246-215-04204 and must be designed and constructed so that:

(a) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and

(b) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(2) CIP equipment that is not designed to be disassembled for cleaning must be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

NEW SECTION

**WAC 246-215-04208 Cleanability—"V" threads, use limitation (2009 FDA Food Code 4-202.13).** Except for hot oil cooking or filtering equipment, "V" type threads may not be used on food-contact surfaces.

NEW SECTION

**WAC 246-215-04210 Cleanability—Hot oil filtering equipment (2009 FDA Food Code 4-202.14).** Hot oil filtering equipment must meet the characteristics specified under WAC 246-215-04204 or 246-215-04206 and must be readily accessible for filter replacement and cleaning of the filter.

NEW SECTION

**WAC 246-215-04212 Cleanability—Can openers (2009 FDA Food Code 4-202.15).** Cutting or piercing parts of can openers must be readily removable for cleaning and for replacement.

NEW SECTION

**WAC 246-215-04214 Cleanability—Nonfood-contact surfaces (2009 FDA Food Code 4-202.16).** Nonfood-contact surfaces must be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

NEW SECTION

**WAC 246-215-04216 Cleanability—Kick plates, removable (2009 FDA Food Code 4-202.17).** Kick plates must be designed so that the areas behind them are accessible for inspection and cleaning by being:

(1) Removable by one of the methods specified under WAC 246-215-04204 (1)(e) or capable of being rotated open; and

(2) Removable or capable of being rotated open without unlocking equipment doors.

NEW SECTION

**WAC 246-215-04218 Cleanability—Ventilation hood systems, filters (2009 FDA Food Code 4-202.18).** Filters or

other grease extracting equipment must be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

NEW SECTION

**WAC 246-215-04220 Accuracy—Temperature measuring devices, food (2009 FDA Food Code 4-203.11).** (1) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit must be accurate to  $\pm 1^{\circ}\text{C}$  in the intended range of use.

(2) Food temperature measuring devices that are scaled only in Fahrenheit must be accurate to  $\pm 2^{\circ}\text{F}$  in the intended range of use.

NEW SECTION

**WAC 246-215-04222 Accuracy—Temperature measuring devices, ambient air and water (2009 FDA Food Code 4-203.12).** (1) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be designed to be easily readable and accurate to  $\pm 1.5^{\circ}\text{C}$  in the intended range of use.

(2) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit must be accurate to  $\pm 3^{\circ}\text{F}$  in the intended range of use.

NEW SECTION

**WAC 246-215-04224 Accuracy—Pressure measuring devices, mechanical warewashing equipment (2009 FDA Food Code 4-203.13).** Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse must have increments of one pound per square inch (seven kilopascals) or smaller and must be accurate to  $\pm$  two pounds per square inch ( $\pm 14$  kilopascals) in the range indicated on the manufacturer's data plate.

NEW SECTION

**WAC 246-215-04226 Functionality—Ventilation hood systems, drip prevention (2009 FDA Food Code 4-204.11).** Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting must be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-04228 Functionality—Equipment openings, closures and deflectors (2009 FDA Food Code 4-204.12).** (1) A cover or lid for equipment must overlap the opening and be sloped to drain.

(2) An opening located within the top of a unit of equipment that is designed for use with a cover or lid must be flanged upward at least two-tenths of an inch (five millimeters).

(3) Except as specified under subsection (4) of this section, fixed piping, temperature measuring devices, rotary

shafts, and other parts extending into the equipment must be provided with a watertight joint at the point where the item enters the equipment.

(4) If a watertight joint is not provided:

(a) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings must be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and

(b) The opening must be flanged as specified under subsection (2) of this section.

#### NEW SECTION

**WAC 246-215-04230 Functionality—Dispensing equipment, protection of equipment and food (2009 FDA Food Code 4-204.13).** In equipment that dispenses or vends liquid food or ice that is not in a packaged form:

(1) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(2) The delivery tube, chute and orifices must be protected from manual contact such as by being recessed;

(3) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers must be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(a) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, wind-blown debris, insects, rodents, and other contaminants that are present in the environment; or

(b) Available for self-service during hours when it is not under the full-time supervision of a food employee; and

(4) The dispensing equipment actuating level or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(5) Dispensing equipment in which potentially hazardous food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under WAC 246-215-03525(1) must:

(a) Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; and

(b) Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 - Manual Food and Beverage Dispensing Equipment.

#### NEW SECTION

**WAC 246-215-04232 Functionality—Vending machine, vending stage closure (2009 FDA Food Code 4-204.14).** The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that is not potentially hazardous food such as

chips, party mixes, and pretzels must be equipped with a self-closing door or cover if the machine is:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, wind-blown debris, insects, rodents, and other contaminants that are present in the environment; or

(2) Available for self-service during hours when it is not under the full-time supervision of a food employee.

#### NEW SECTION

**WAC 246-215-04234 Functionality—Bearings and gear boxes, leakproof (2009 FDA Food Code 4-204.15).** Equipment containing bearings and gears that require lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

#### NEW SECTION

**WAC 246-215-04236 Functionality—Beverage tubing, separation (2009 FDA Food Code 4-204.16).** Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

#### NEW SECTION

**WAC 246-215-04238 Functionality—Ice units, separation of drains (2009 FDA Food Code 4-204.17).** Liquid waste drain lines may not pass through an ice machine or ice storage bin.

#### NEW SECTION

**WAC 246-215-04240 Functionality—Condenser unit, separation (2009 FDA Food Code 4-204.18).** If a condenser unit is an integral component of equipment, the condenser unit must be separated from the food and food storage space by a dustproof barrier.

#### NEW SECTION

**WAC 246-215-04242 Functionality—Can openers on vending machines (2009 FDA Food Code 4-204.19).** Cutting or piercing parts of can openers on vending machines must be protected from manual contact, dust, insects, rodents, and other contamination.

#### NEW SECTION

**WAC 246-215-04244 Functionality—Molluscan shellfish tanks (2009 FDA Food Code 4-204.110).** (1) Except as specified under subsection (2) of this section, molluscan shellfish life support system display tanks may not be used to store or display shellfish that are offered for human consumption and must be conspicuously marked so that it is obvious to the consumer that shellfish are for display only.

(2) Molluscan shellfish life-support system display tanks that are used to store or display shellfish that are offered for human consumption must be operated and maintained in

accordance with a variance granted by the regulatory authority as specified under WAC 246-215-08110 and a HACCP plan that:

- (a) Is submitted by the permit holder and approved as specified under WAC 246-215-08115; and
- (b) Ensures that:
  - (i) Water used with fish other than molluscan shellfish does not flow into the molluscan tank;
  - (ii) The safety and quality of the shellfish as they were received are not compromised by the use of the tank; and
  - (iii) The identity of the source of the shellstock is retained as specified under WAC 246-215-03290.

#### NEW SECTION

**WAC 246-215-04246 Functionality—Vending machines, automatic shutoff (2009 FDA Food Code 4-204.111).** (1) A machine vending potentially hazardous food must have an automatic control that prevents the machine from vending food:

(a) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Part 3 of this chapter; and

(b) If a condition specified under (a) of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part 3 of this chapter.

(2) When the automatic shutoff within a machine vending potentially hazardous food is activated:

(a) In a refrigerated vending machine, the ambient temperature may not exceed 41°F (5°C) for more than thirty minutes immediately after the machine is filled, serviced, or restocked; or

(b) In a hot holding vending machine, the ambient air temperature may not be less than 135°F (57°C) for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.

#### NEW SECTION

**WAC 246-215-04248 Functionality—Temperature measuring devices (2009 FDA Food Code 4-204.112).** (1) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device must be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(2) Except as specified in subsection (3) of this section, cold or hot holding equipment used for potentially hazardous food must be designed to include and must be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(3) Subsection (2) of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates,

bainmaries, steam tables, insulated food transport containers, and salad bars.

(4) Temperature measuring devices must be designed to be easily readable.

(5) Food temperature measuring devices and water temperature measuring devices on warewashing machines must have a numerical scale, printed record, or digital readout in increments no greater than 2°F or 1°C in the intended range of use.

#### NEW SECTION

**WAC 246-215-04250 Functionality—Warewashing machines, data plate operating specifications (2009 FDA Food Code 4-204.113).** A warewashing machine must be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:

(1) Temperatures required for washing, rinsing, and sanitizing;

(2) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only pumped sanitizing rinse; and

(3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

#### NEW SECTION

**WAC 246-215-04252 Functionality—Warewashing machines, internal baffles (2009 FDA Food Code 4-204.114).** Warewashing machine wash and rinse tanks must be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

#### NEW SECTION

**WAC 246-215-04254 Functionality—Warewashing machines, temperature measuring devices (2009 FDA Food Code 4-204.115).** A warewashing machine must be equipped with a temperature measuring device that indicates the temperature of the water:

(1) In each wash and rinse tank; and

(2) As the water enters the hot water sanitization final rinse manifold or in the chemical sanitizing solution tank.

#### NEW SECTION

**WAC 246-215-04256 Functionality—Manual warewashing equipment, heaters and baskets (2009 FDA Food Code 4-204.116).** If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink must be:

(1) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F (77°C); and

(2) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

NEW SECTION

**WAC 246-215-04258 Functionality—Warewashing machines, automatic dispensing of detergents and sanitizers (2009 FDA Food Code 4-204.117).** A warewashing machine that is installed after adoption of this chapter by the regulatory authority must be equipped to:

- (1) Automatically dispense detergents and sanitizers; and
- (2) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

NEW SECTION

**WAC 246-215-04260 Functionality—Warewashing machines, flow pressure device (2009 FDA Food Code 4-204.118).** (1) Warewashing machines that provide a fresh hot water sanitizing rinse must be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and

- (2) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device must be mounted in a one-fourth inch (6.4 mm) iron pipe size (IPS) valve.

(3) Subsections (1) and (2) of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

NEW SECTION

**WAC 246-215-04262 Functionality—Warewashing sinks and drainboards, self-draining (2009 FDA Food Code 4-204.119).** Sinks and drainboards of warewashing sinks and machines must be self-draining.

NEW SECTION

**WAC 246-215-04264 Functionality—Equipment compartments, drainage (2009 FDA Food Code 4-204.120).** Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice must be sloped to an outlet that allows complete draining.

NEW SECTION

**WAC 246-215-04266 Functionality—Vending machines, liquid waste products (2009 FDA Food Code 4-204.121).** (1) Vending machines designed to store beverages that are packaged in containers made from paper products must be equipped with diversion devices and retention pans or drains for container leakage.

- (2) Vending machines that dispense liquid food in bulk must be:

(a) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(b) Equipped with an automatic shutoff device that places the machine out of operation before the waste receptacle overflows.

(3) Shutoff devices specified under subsection (2)(b) of this section must prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

NEW SECTION

**WAC 246-215-04268 Functionality—Case lot handling equipment, moveability (2009 FDA Food Code 4-204.122).** Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, must be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

NEW SECTION

**WAC 246-215-04270 Functionality—Vending machine doors and openings (2009 FDA Food Code 4-204.123).** (1) Vending machine doors and access opening covers to food and container storage spaces must be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch (1.5 millimeters) by:

(a) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth inch (1.5 millimeters). Screening of twelve mesh to one inch (twelve or more mesh to 2.5 centimeters) meets this requirement;

(b) Being effectively gasketed;

(c) Having interface surfaces that are at least one-half inch (13 mm) wide; or

(d) Jambes or surfaces used to form an L-shaped entry path to the interface.

(2) Vending machine service connection openings through an exterior wall of a machine must be closed by sealants, clamps, or grommets so that the openings are no larger than one-sixteenth inch (1.5 mm).

NEW SECTION

**WAC 246-215-04272 Acceptability—Food equipment, certification and classification (2009 FDA Food Code 4-205.10).** Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI) - Accredited certification program is deemed to comply with Subparts A and B of this part.

**Subpart C - Numbers and Capacities**NEW SECTION

**WAC 246-215-04300 Equipment—Cooling, heating, and holding capacities (2009 FDA Food Code 4-301.11).** Equipment for cooling and heating food, and holding cold

and hot food, must be sufficient in number and capacity to provide food temperatures as specified under Part 3.

#### NEW SECTION

**WAC 246-215-04305 Equipment—Manual warewashing, sink compartment requirements (2009 FDA Food Code 4-301.12).** (1) Except as specified in subsection (3) of this section, a sink with at least three compartments must be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(2) Sink compartments must be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subsection (3) of this section must be used.

(3) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment includes, but is not limited to:

- (a) High-pressure detergent sprayers;
- (b) Low- or line-pressure spray detergent foamers;
- (c) Other task-specific cleaning equipment;
- (d) Brushes or other implements;
- (e) Two-compartment sinks as specified under subsections (4) and (5) of this section; or

(f) Receptacles that substitute for the compartments of a multicompartment sink.

(4) Before a two-compartment sink is used:

- (a) The permit holder shall have its use approved; and
- (b) The permit holder shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:

(i) Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use; and

(ii) Use approved procedures to properly clean and sanitize kitchenware.

(5) A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

#### NEW SECTION

**WAC 246-215-04310 Equipment—Drainboards (2009 FDA Food Code 4-301.13).** Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that might accumulate during hours of operation must be provided for necessary utensils holding before cleaning and after sanitizing.

#### NEW SECTION

**WAC 246-215-04315 Equipment—Ventilation hood systems, adequacy (2009 FDA Food Code 4-301.14).** Ventilation hood systems and devices must be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

#### NEW SECTION

**WAC 246-215-04320 Equipment—Clothes washers and dryers (2009 FDA Food Code 4-301.15).** (1) Except as specified in subsection (2) of this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer must be provided and used.

(2) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under WAC 246-215-04905, a mechanical clothes washer and dryer need not be provided.

#### NEW SECTION

**WAC 246-215-04325 Equipment—Designated food preparation sinks.** Food establishments must have designated food preparation sinks that are:

(1) Sufficient in number and size to wash, soak, rinse, drain, cool, thaw, or otherwise process any food that requires placement in a sink;

(2) Appropriate for the menu, method of food preparation, and volume of food prepared; and

(3) Not used for handwashing, utensil washing, or other activities that could contaminate food.

#### NEW SECTION

**WAC 246-215-04330 Utensils, temperature measuring devices, and testing devices—Utensils, consumer self-service (2009 FDA Food Code 4-302.11).** A food dispensing utensil must be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.

#### NEW SECTION

**WAC 246-215-04335 Utensils, temperature measuring devices, and testing devices—Food temperature measuring devices (2009 FDA Food Code 4-302.12).** (1) Food temperature measuring devices must be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Part 3.

(2) A temperature measuring device with a suitable diameter probe that is designed to measure the temperature of thin masses must be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish fillets.

#### NEW SECTION

**WAC 246-215-04340 Utensils, temperature measuring devices, and testing devices—Temperature measuring devices, manual warewashing (2009 FDA Food Code 4-302.13).** In manual warewashing operations, a temperature measuring device must be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

#### NEW SECTION

**WAC 246-215-04345 Utensils, temperature measuring devices, and testing devices—Sanitizing solutions, testing devices (2009 FDA Food Code 4-302.14).** A test kit

or other device that accurately measures the concentration in mg/L of sanitizing solutions must be provided.

#### **Subpart D - Location and Installation**

##### NEW SECTION

**WAC 246-215-04400 Location—Equipment, clothes washers and dryers, and storage cabinets, contamination prevention (2009 FDA Food Code 4-401.11).** (1) Except as specified in subsection (2) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

- (a) In locker rooms;
- (b) In toilet rooms;
- (c) In garbage rooms;
- (d) In mechanical rooms;
- (e) Under sewer lines that are not shielded to intercept potential drips;
- (f) Under leaking water lines including automatic fire sprinkler heads or under lines on which water has condensed;
- (g) Under open stairwells; or
- (h) Under other sources of contamination.

(2) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(3) If a mechanical clothes washer or dryer is provided, it must be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

##### NEW SECTION

**WAC 246-215-04405 Installation—Fixed equipment, spacing or sealing (2009 FDA Food Code 4-402.11).** (1) Equipment that is fixed because it is not easily movable must be installed so that it is:

- (a) Spaced to allow access for cleaning along the sides, behind, and above the equipment;
- (b) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one thirty-second inch (1 mm); or
- (c) Sealed to adjoining equipment or walls, if the equipment is exposed to spilling or seepage.

(2) Counter-mounted equipment that is not easily movable must be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

- (a) Sealed; or
- (b) Elevated on legs as specified under WAC 246-215-04410.

##### NEW SECTION

**WAC 246-215-04410 Installation—Fixed equipment, elevation or sealing (2009 FDA Food Code 4-402.12).** (1) Except as specified in subsections (2) and (3) of this section, floor-mounted equipment that is not easily movable must be sealed to the floor or elevated on legs that provide at least a

six inch (15 cm) clearance between the floor and the equipment.

(2) If no part of the floor under the floor-mounted equipment is more than six inches (15 cm) from the point of cleaning access, the clearance space may be only four inches (10 cm).

(3) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(4) Except as specified in subsection (5) of this section, counter-mounted equipment that is not easily movable must be elevated on legs that provide at least a four inch (10 cm) clearance between the table and the equipment.

(5) The clearance space between the table and counter-mounted equipment may be:

(a) Three inches (7.5 cm) if the horizontal distance of the table top under the equipment is no more than 20 inches (50 cm) from the point of access for cleaning; or

(b) Two inches (5 cm) if the horizontal distance of the table top under the equipment is no more than three inches (7.5 cm) from the point of access for cleaning.

#### **Subpart E - Maintenance and Operations**

##### NEW SECTION

**WAC 246-215-04500 Equipment—Good repair and proper adjustment (2009 FDA Food Code 4-501.11).** (1) Equipment must be maintained in a state of repair and condition that meets the requirements specified under Part 4, Subpart A and Part 4, Subpart B.

(2) Equipment components such as doors, seals, hinges, fasteners, and kick plates must be kept intact, tight, and adjusted in accordance with the manufacturer's specifications.

(3) Cutting or piercing parts of can openers must be replaced as needed to minimize the creation of metal fragments that can contaminate food when the container is opened.

##### NEW SECTION

**WAC 246-215-04505 Equipment—Cutting surfaces (2009 FDA Food Code 4-501.12).** Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

##### NEW SECTION

**WAC 246-215-04510 Equipment—Microwave ovens (2009 FDA Food Code 4-501.13).** Microwave ovens must meet the safety standards specified in 21 C.F.R. 1030.10 Microwave Ovens.

##### NEW SECTION

**WAC 246-215-04515 Equipment—Warewashing equipment, cleaning frequency (2009 FDA Food Code 4-**

**501.14).** A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under WAC 246-215-04310 must be cleaned:

- (1) Before use;
- (2) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
- (3) If used, at least every twenty-four hours.

#### NEW SECTION

**WAC 246-215-04520 Equipment—Warewashing machines, manufacturer's operating instructions (2009 FDA Food Code 4-501.15).** (1) A warewashing machine and its auxiliary components must be operated in accordance with the machine's data plate and other manufacturer's instructions.

(2) A warewashing machine's conveyor speed or automatic cycle times must be maintained accurately timed in accordance with manufacturer's specifications.

#### NEW SECTION

**WAC 246-215-04525 Equipment—Warewashing sinks, use limitation (2009 FDA Food Code 4-501.16).** (1) A warewashing sink may not be used for handwashing as specified under WAC 246-215-02315.

(2) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink must be cleaned as specified under WAC 246-215-04515 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food must be sanitized as specified under subpart G of this part before and after using the sink to wash produce or thaw food.

#### NEW SECTION

**WAC 246-215-04530 Equipment—Warewashing equipment, cleaning agents (2009 FDA Food Code 4-501.17).** When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified under WAC 246-215-04305(3), must contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

#### NEW SECTION

**WAC 246-215-04535 Equipment—Warewashing equipment, clean solutions (2009 FDA Food Code 4-501.18).** The wash, rinse and sanitize solutions must be maintained clean.

#### NEW SECTION

**WAC 246-215-04540 Equipment—Manual warewashing equipment, wash solution temperature (2009**

**FDA Food Code 4-501.19).** The temperature of the wash solution in manual warewashing equipment must be maintained at not less than 110°F (43°C) or the temperature specified on the cleaning agent manufacturer's label instructions.

#### NEW SECTION

**WAC 246-215-04545 Equipment—Mechanical warewashing equipment, wash solution temperature (2009 FDA Food Code 4-501.110).** (1) The temperature of the wash solution in spray-type warewashers that use hot water to sanitize may not be less than:

- (a) For a stationary rack, single temperature machine, 165°F (74°C);
- (b) For a stationary rack, dual temperature machine, 150°F (66°C);
- (c) For a single tank, conveyor, dual temperature machine, 160°F (71°C);
- (d) For a multitank, conveyor, multitemperature machine, 150°F (66°C).

(2) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 120°F (49°C).

#### NEW SECTION

**WAC 246-215-04550 Equipment—Manual warewashing equipment, hot water sanitization temperature (2009 FDA Food Code 4-501.111).** If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water must be maintained at 171°F (77°C) or above.

#### NEW SECTION

**WAC 246-215-04555 Equipment—Mechanical warewashing equipment, hot water sanitization temperatures (2009 FDA Food Code 4-501.112).** (1) Except as specified in subsection (2) of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 194°F (90°C) or less than:

- (a) For a stationary rack, single temperature machine, 165°F (74°C); or
- (b) For all other machines, 180°F (82°C).

(2) The maximum temperature specified under subsection (1) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

#### NEW SECTION

**WAC 246-215-04560 Equipment—Mechanical warewashing equipment, sanitization pressure (2009 FDA Food Code 4-501.113).** The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, must be within the range specified on the machine manufacturer's

data plate and may not be less than five pounds per square inch (35 kilopascals) or more than thirty pounds per square inch (200 kilopascals).

NEW SECTION

**WAC 246-215-04565 Equipment—Manual and mechanical warewashing equipment, chemical sanitization—Temperature, pH, concentration, and hardness (2009 FDA Food Code 4-501.114).** A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under WAC 246-215-04710(3) must meet the requirements specified under WAC 246-215-07220, must be used in accordance with the EPA-registered label use instructions, and must be used as follows:

(1) A chlorine solution must have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Concentration Range	Minimum Temperature	
	pH 10 or less °F (°C)	pH 8 or less °F (°C)
mg/L		
25-49	120 (49)	120 (49)
50-99	100 (38)	75 (24)
100	55 (13)	55 (13)

(2) An iodine solution must have a:

(a) Minimum temperature of 68°F (20°C);

(b) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and

(c) Concentration between 12.5 mg/L and 25 mg/L.

(3) A quaternary ammonium compound solution must:

(a) Have a minimum temperature of 75°F (24°C);

(b) Have a concentration as specified under WAC 246-215-07220 and as indicated by the manufacturer's use directions included in the labeling; and

(c) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions;

(4) If another solution of a chemical specified under subsections (1) through (3) of this section is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution must be approved; or

(5) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it must be applied in accordance with the EPA-registered label use instructions.

NEW SECTION

**WAC 246-215-04570 Equipment—Manual warewashing equipment, chemical sanitization using detergent-sanitizers (2009 FDA Food Code 4-501.115).** If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied

in the sanitizing step must be the same detergent-sanitizer that is used in the washing step.

NEW SECTION

**WAC 246-215-04575 Equipment—Warewashing equipment, determining chemical sanitizer concentration (2009 FDA Food Code 4-501.116).** Concentration of the sanitizing solution must be accurately determined by using a test kit or other device.

NEW SECTION

**WAC 246-215-04580 Utensils and temperature and pressure measuring devices—Good repair and calibration (2009 FDA Food Code 4-502.11).** (1) Utensils must be maintained in a state of repair or condition that complies with the requirements specified under Part 4, Subparts A and B, or must be discarded.

(2) Food temperature measuring devices must be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(3) Ambient air temperature, water pressure, and water temperature measuring devices must be maintained in good repair and be accurate within the intended range of use.

NEW SECTION

**WAC 246-215-04585 Utensils and temperature and pressure measuring devices—Single-service and single-use articles, required use (2009 FDA Food Code 4-502.12).** A food establishment without facilities specified under Part 4, Subparts 6 and 7 for cleaning and sanitizing kitchenware and tableware must provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

NEW SECTION

**WAC 246-215-04590 Utensils and temperature and pressure measuring devices—Single-service and single-use articles, use limitation (2009 FDA Food Code 4-502.13).** (1) Single-service and single-use articles may not be reused.

(2) The bulk milk container dispensing tube must be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

NEW SECTION

**WAC 246-215-04595 Utensils and temperature and pressure measuring devices—Shells, use limitation (2009 FDA Food Code 4-502.14).** Mollusk and crustacea shells may not be used more than once as serving containers.

**Subsection F - Cleaning of Equipment and Utensils**

NEW SECTION

**WAC 246-215-04600 Objective—Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils (2009 FDA Food Code 4-601.11).** (1) Equipment food-contact surfaces and utensils must be clean to sight and touch.

(2) The food-contact surfaces of cooking equipment and pans must be kept free of encrusted grease deposits and other soil accumulations.

(3) Nonfood-contact surfaces of equipment must be kept free of an accumulation of dust, dirt, food residue, and other debris.

NEW SECTION

**WAC 246-215-04605 Objective—Equipment food-contact surfaces and utensils (2009 FDA Food Code 4-602.11).** (1) Equipment food-contact surfaces and utensils must be cleaned:

(a) Except as specified in subsection (2) of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;

(b) Each time there is a change from working with raw foods to working with ready-to-eat foods;

(c) Between uses with raw fruits and vegetables and with potentially hazardous food;

(d) Before using or storing a food temperature measuring device; and

(e) At any time during the operation when contamination might have occurred.

(2) Subsection (1)(a) of this section does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under WAC 246-215-03400 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.

(3) Except as specified in subsection (4) of this section, if used with potentially hazardous food, equipment food-contact surfaces and utensils must be cleaned throughout the day at least every four hours.

(4) Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:

(a) In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Part 3 and the containers are cleaned when they are empty;

(b) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

(i) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Temperature	Cleaning Frequency
41°F or less (5.0°C or less)	24 hours

Temperature	Cleaning Frequency
> 41°F - 45°F (> 5.0°C - 7.2°C)	20 hours
> 45°F - 50°F (> 7.2°C - 10.0°C)	16 hours
> 50°F - 55°F (> 10.0°C - 12.8°C)	10 hours

(ii) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.

(c) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under Part 3, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned every twenty-four hours;

(d) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Part 3;

(e) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;

(f) The cleaning schedule is approved based on consideration of:

(i) Characteristics of the equipment and its use;

(ii) The type of food involved;

(iii) The amount of food residue accumulation; and

(iv) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

(g) In-use utensils are intermittently stored in a container of water in which the water is maintained at 135°F (57°C) or more or 41°F (5°C) or less and the utensils and container are cleaned at least every twenty-four hours or at a frequency necessary to preclude accumulation of soil residues.

(5) Except when dry cleaning methods are used as specified under WAC 246-215-04620, surfaces of utensils and equipment contacting food that is not potentially hazardous food must be cleaned:

(a) At any time when contamination might have occurred;

(b) At least every twenty-four hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(c) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(d) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(i) At a frequency specified by the manufacturer; or

(ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

NEW SECTION

**WAC 246-215-04610 Objective—Cooking and baking equipment (2009 FDA Food Code 4-602.12).** (1) The food contact surfaces of cooking and baking equipment must be cleaned at least every twenty-four hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified under WAC 246-215-04605 (4)(f).

(2) The cavities and door seals of microwave ovens must be cleaned at least every twenty-four hours by using the manufacturer's recommended cleaning procedure.

NEW SECTION

**WAC 246-215-04615 Objective—Nonfood-contact surfaces (2009 FDA Food Code 4-602.13).** Nonfood-contact surfaces of equipment must be cleaned at a frequency necessary to preclude accumulation of soil residues.

NEW SECTION

**WAC 246-215-04620 Methods—Dry cleaning (2009 FDA Food Code 4-603.11).** (1) If used, dry cleaning methods such as brushing, scraping, and vacuuming may only contact surfaces that are soiled with dry food residues that are not potentially hazardous food.

(2) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

NEW SECTION

**WAC 246-215-04625 Methods—Precleaning (2009 FDA Food Code 4-603.12).** (1) Food debris on equipment and utensils must be scraped over a waste disposal unit or garbage receptacle or must be removed in a warewashing machine with a prewash cycle.

(2) If necessary for effective cleaning, utensils and equipment must be preflushed, presoaked, or scrubbed with abrasives.

NEW SECTION

**WAC 246-215-04630 Methods—Loading of soiled items, warewashing machines (2009 FDA Food Code 4-603.13).** Soiled items to be cleaned in a warewashing machine must be loaded into racks, trays, or baskets or onto conveyors in a position that:

(1) Exposes the items to the unobstructed spray from all cycles; and

(2) Allows the item to drain.

NEW SECTION

**WAC 246-215-04635 Methods—Wet cleaning (2009 FDA Food Code 4-603.14).** (1) Equipment food-contact surfaces and utensils must be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(2) The washing procedures selected must be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

NEW SECTION

**WAC 246-215-04640 Methods—Washing, procedures for alternative manual warewashing equipment (2009 FDA Food Code 4-603.15).** If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing must be done by using alternative manual warewashing equipment as specified under WAC 246-215-04305(3) in accordance with the following procedures:

(1) Equipment must be disassembled as necessary to allow access of the detergent solution to all parts;

(2) Equipment components and utensils must be scraped or rough cleaned to remove food particle accumulation; and

(3) Equipment and utensils must be washed as specified under WAC 246-215-04635(1).

NEW SECTION

**WAC 246-215-04645 Methods—Rinsing procedures (2009 FDA Food Code 4-603.16).** Washed utensils and equipment must be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(1) Use of a distinct, separate water rinse after washing and before sanitizing if using:

(a) A three-compartment sink;

(b) Alternative manual warewashing equipment equivalent to a three-compartment sink as specified under WAC 246-215-04305(3); or

(c) A three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;

(2) Use of a detergent-sanitizer as specified under WAC 246-215-04570 if using:

(a) Alternative warewashing equipment as specified under WAC 246-215-04305(3) that is approved for use with a detergent-sanitizer; or

(b) A warewashing system for CIP equipment;

(3) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;

(4) If using a warewashing machine that does not recycle the sanitizing solution as specified under subsection (5) of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:

(a) Integrated in the application of the sanitizing solution; and

(b) Wasted immediately after each application; or

(5) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

NEW SECTION

**WAC 246-215-04650 Methods—Returnables, cleaning for refilling (2009 FDA Food Code 4-603.17).** (1) Except as specified in subsections (2) and (3) of this section, returned empty containers intended for cleaning and refilling with food must be cleaned and refilled in a regulated food processing plant.

(2) A food-specific container for beverages may be refilled at a food establishment if:

(a) Only a beverage that is not a potentially hazardous food is used as specified under WAC 246-215-03348(1);

(b) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(c) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(d) The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(e) The container is refilled by:

(i) An employee of the food establishment; or

(ii) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.

(3) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

**Subpart G - Sanitization of Equipment and Utensils**NEW SECTION

**WAC 246-215-04700 Objective—Food-contact surfaces and utensils (2009 FDA Food Code 4-701.10).** Equipment food-contact surfaces and utensils must be sanitized.

NEW SECTION

**WAC 246-215-04705 Frequency—Before use after cleaning (2009 FDA Food Code 4-702.11).** Utensils and food-contact surfaces of equipment must be sanitized before use after cleaning.

NEW SECTION

**WAC 246-215-04710 Methods—Hot water and chemical (2009 FDA Food Code 4-703.11).** After being cleaned, equipment food-contact surfaces and utensils must be sanitized in:

(1) Hot water manual operations by immersion for at least thirty seconds and as specified under WAC 246-215-04550;

(2) Hot water mechanical operations by being cycled through equipment that is set up as specified under WAC 246-215-04520, 246-215-04555, and 246-215-04560 and achieving a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator; or

(3) Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under WAC 246-215-04565. Contact times must be consistent with those on EPA-registered label use instructions by providing:

(a) Except as specified under (b) of this subsection, a contact time of at least ten seconds for a chlorine solution specified under WAC 246-215-04565(1);

(b) A contact time of at least seven seconds for a chlorine solution of 50 mg/L that has a pH of ten or less and a temperature of at least 100°F (38°C) or a pH of eight or less and a temperature of at least 75°F (24°C);

(c) A contact time of at least thirty seconds for other chemical sanitizing solutions; or

(d) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in WAC 246-215-01115.

**Subpart H - Laundering**NEW SECTION

**WAC 246-215-04800 Objective—Clean linens (2009 FDA Food Code 4-801.11).** Clean linens must be free from food residues and other soiling matter.

NEW SECTION

**WAC 246-215-04805 Frequency—Specifications (2009 FDA Food Code 4-802.11).** (1) Linens that do not come in direct contact with food must be laundered between operations if they become wet, sticky, or visibly soiled.

(2) Cloth gloves used as specified under WAC 246-215-03342(4) must be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork, or poultry.

(3) Linens and napkins that are used as specified under WAC 246-215-03336 and cloth napkins must be laundered between each use.

(4) Wet wiping cloths must be laundered daily.

(5) Dry wiping cloths must be laundered as necessary to prevent contamination of food and clean serving utensils.

NEW SECTION

**WAC 246-215-04810 Methods—Storage of soiled linens (2009 FDA Food Code 4-803.11).** Soiled linens must be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-04815 Methods—Mechanical washing (2009 FDA Food Code 4-803.12).** (1) Except as specified in subsection (2) of this section, linens must be mechanically washed.

(2) In food establishments in which only wiping cloths are laundered as specified under WAC 246-215-04320(2), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a ware-washing sink that is cleaned as specified under WAC 246-215-04515.

#### NEW SECTION

**WAC 246-215-04820 Methods—Use of laundry facilities (2009 FDA Food Code 4-803.13).** (1) Except as specified in subsection (2) of this section, laundry facilities on the premises of a food establishment must be used only for the washing and drying of items used in the operation of the establishment.

(2) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

#### **Subpart I - Protection of Clean Items**

#### NEW SECTION

**WAC 246-215-04900 Drying—Equipment and utensils, air-drying required (2009 FDA Food Code 4-901.11).** After cleaning and sanitizing, equipment and utensils:

(1) Must be air-dried or used after adequate draining as specified in the first paragraph of 40 C.F.R. 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), before contact with food; and

(2) May not be cloth-dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

#### NEW SECTION

**WAC 246-215-04905 Drying—Wiping cloths, air drying locations (2009 FDA Food Code 4-901.12).** Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified under WAC 246-215-04320(2) must be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under WAC 246-215-04565.

#### NEW SECTION

**WAC 246-215-04910 Lubricating and reassembling—Food-contact surfaces (2009 FDA Food Code 4-902.11).** Lubricants as specified under WAC 246-215-07240 must be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

#### NEW SECTION

**WAC 246-215-04915 Lubricating and reassembling—Equipment (2009 FDA Food Code 4-902.12).** Equipment must be reassembled so that food-contact surfaces are not contaminated.

#### NEW SECTION

**WAC 246-215-04920 Storing—Equipment, utensils, linens, and single-service and single-use articles (2009 FDA Food Code 4-903.11).** (1) Except as specified in subsection (4) of this section, cleaned equipment, utensils, laundered linens, and single-service and single-use articles must be stored:

- (a) In a clean, dry location;
- (b) Where they are not exposed to splash, dust, or other contamination; and
- (c) At least six inches (15 cm) above the floor.

(2) Clean equipment and utensils must be stored as specified under subsection (1) of this section and must be stored:

- (a) In a self-draining position that allows air drying; and
- (b) Covered or inverted.

(3) Single-service and single-use articles must be stored as specified under subsection (1) of this section and must be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(4) Items that are kept in closed packages may be stored less than six inches (15 cm) above the floor on dollies, pallets, racks, and skids that are designed as specified under WAC 246-215-04268.

#### NEW SECTION

**WAC 246-215-04925 Storing—Prohibitions (2009 FDA Food Code 4-903.12).** (1) Except as specified in subsection (2) of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

- (a) In locker rooms;
- (b) In toilet rooms;
- (c) In garbage rooms;
- (d) In mechanical rooms;
- (e) Under sewer lines that are not shielded to intercept potential drips;
- (f) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (g) Under open stairwells; or
- (h) Under other sources of contamination.

(2) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

#### NEW SECTION

**WAC 246-215-04930 Preventing contamination—Kitchenware and tableware (2009 FDA Food Code 4-904.11).** (1) Single-service and single-use articles and cleaned and sanitized utensils must be handled, displayed,

and dispensed so that contamination of food-and lip-contact surfaces is prevented.

(2) Knives, forks and spoons that are not prewrapped must be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(3) Except as specified under subsection (2) of this section, single-service articles that are intended for food-or lip-contact must be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

#### NEW SECTION

**WAC 246-215-04935 Preventing contamination—Soiled and clean tableware (2009 FDA Food Code 4-904.12).** Soiled tableware must be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

#### NEW SECTION

**WAC 246-215-04940 Preventing contamination—Preset tableware (2009 FDA Food Code 4-904.13).** (1) Except as specified in subsection (2) of this section, tableware that is preset must be protected from contamination by being wrapped, covered, or inverted;

(2) Preset tableware may be exposed if:

(a) Unused settings are removed when a consumer is seated; or

(b) Settings not removed when a consumer is seated are cleaned and sanitized before further use.

#### NEW SECTION

**WAC 246-215-04945 Preventing contamination—Rinsing equipment and utensils after cleaning and sanitizing (2009 FDA Food Code 4-904.14).** After being cleaned and sanitized, equipment and utensils may not be rinsed before air drying or use unless:

(1) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under WAC 246-215-04226 through 246-215-04270 and 246-215-04500 through 246-215-04575; and

(2) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

### **PART 5: WATER, PLUMBING AND WASTE**

#### **Subpart A - Water**

#### NEW SECTION

**WAC 246-215-05100 Source—Approved system (2009 FDA Food Code 5-101.11).** Drinking water must be

obtained from an approved source that is a public water system.

#### NEW SECTION

**WAC 246-215-05105 Source—System flushing and disinfection (2009 FDA Food Code 5-101.12).** A drinking water system must be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that might introduce contaminants into the system.

#### NEW SECTION

**WAC 246-215-05110 Quality—Bottled drinking water (2009 FDA Food Code 5-101.13).** Bottled drinking water used or sold for food service must be obtained from approved sources in accordance with 21 C.F.R. 129 - Processing and Bottling of Bottled Drinking Water and chapters 246-290 and 246-291 WAC.

#### NEW SECTION

**WAC 246-215-05115 Quality—Standards (2009 FDA Food Code 5-102.11).** Water used in food establishments must meet drinking water quality standards in accordance with chapters 246-290 and 246-291 WAC, except as specified under WAC 246-215-05120.

#### NEW SECTION

**WAC 246-215-05120 Quality—Nondrinking water (2009 FDA Food Code 5-102.12).** (1) A nondrinking water supply must be used only if its use is approved.

(2) Nondrinking water must be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, fire protection and irrigation of nonfood landscape foliage.

#### NEW SECTION

**WAC 246-215-05125 Quality—Sampling (2009 FDA Food Code 5-102.13).** Except when used as specified under WAC 246-215-05120, water from a nonpublic water system must be sampled and tested at least annually and as required by state water quality regulations.

#### NEW SECTION

**WAC 246-215-05130 Quantity and availability—Sample report (2009 FDA Food Code 5-102.14).** The most recent sample report for the nonpublic water system must be retained on file in the food establishment or the report must be maintained as specified by state water quality regulations.

#### NEW SECTION

**WAC 246-215-05135 Quantity and availability—Capacity (2009 FDA Food Code 5-103.11).** (1) The water source and system must be of sufficient capacity to meet the peak water demands of the food establishment.

(2) Hot water generation and distribution systems must be sufficient to meet the peak hot water demands throughout the food establishment.

#### NEW SECTION

**WAC 246-215-05140 Distribution, delivery and retention—Pressure (2009 FDA Food Code 5-103.12).** Water under pressure must be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under WAC 246-215-05150 (1) and (2) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

#### NEW SECTION

**WAC 246-215-05145 Distribution, delivery and retention—System (2009 FDA Food Code 5-104.11).** Water must be received from the source through the use of:

- (1) An approved public water main; or
- (2) One or more of the following that must be constructed, maintained, and operated according to law:
  - (a) Nonpublic water main, water pumps, pipes, hoses, connections and other appurtenances;
  - (b) Water transport vehicles; and
  - (c) Water containers.

#### NEW SECTION

**WAC 246-215-05150 Distribution, delivery and retention—Alternate water supply (2009 FDA Food Code 5-104.12).** Water meeting the requirements specified under Part 5, Subpart A must be made available for a mobile facility, for a temporary food establishment, without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

- (1) A supply of containers of commercially bottled drinking water;
- (2) One or more closed portable water containers;
- (3) An enclosed vehicular water tank;
- (4) An on-premises water storage tank; or
- (5) Piping, tubing, or hoses connected to an adjacent approved source.

#### **Subpart B - Plumbing System**

#### NEW SECTION

**WAC 246-215-05200 Materials—Approved (2009 FDA Food Code 5-201.11).** (1) A plumbing system and hoses conveying water must be constructed and repaired with approved materials according to law.

- (2) A water filter must be made of safe materials.

#### NEW SECTION

**WAC 246-215-05205 Design, construction and installation—Approved system and cleanable fixtures (2009 FDA Food Code 5-202.11).** (1) A plumbing system

must be designed, constructed, and installed according to law.

(2) A plumbing fixture such as a handwash sink, toilet or urinal must be easily cleanable.

#### NEW SECTION

**WAC 246-215-05210 Design, construction and installation—Handwashing facility, installation (2009 FDA Food Code 5-202.12).** (1) A handwashing sink must be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

(2) A steam mixing valve may not be used at a handwash sink.

(3) A self-closing, slow closing or metering faucet must provide a flow of water for at least fifteen seconds without the need to reactivate the faucet.

(4) An automatic handwashing facility must be installed in accordance with manufacturer's instructions.

(5) Handwashing sinks in food establishments must be adequately sized to allow a food employee to wash both hands simultaneously.

(6) Food employees offering food samples, such as food demonstrators, may have handwashing sinks that meet the temporary food establishment requirements in WAC 246-215-09225 if not handling raw meat, fish or poultry.

#### NEW SECTION

**WAC 246-215-05215 Design, construction and installation—Backflow prevention, air gap (2009 FDA Food Code 5-202.13).** An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment must be at least twice the diameter of the water supply inlet and may not be less than one inch (25 mm).

#### NEW SECTION

**WAC 246-215-05220 Design, construction and installation—Backflow prevention device, design standard (2009 FDA Food Code 5-202.14).** A backflow or backsiphonage prevention device installed on a water supply system must meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

#### NEW SECTION

**WAC 246-215-05225 Design, construction and installation—Conditioning device, design (2009 FDA Food Code 5-202.15).** A water filter, screen and other water conditioning device installed on water lines must be designed to facilitate disassembly for periodic service and cleaning. A water filter element must be of the replaceable type.

#### NEW SECTION

**WAC 246-215-05230 Numbers and capacities—Handwashing sinks (2009 FDA Food Code 5-203.11).** (1)

Except as specified in subsection (2) of this section, at least one handwashing sink, a number of handwashing sinks necessary for their convenient use by employees in areas specified under WAC 246-215-05255, and not fewer than the number of handwashing sinks required by law must be provided.

(2) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one handwashing sink.

#### NEW SECTION

**WAC 246-215-05235 Restrooms—Toilets and urinals (2009 FDA Food Code 5-203.12).** (1) At least one toilet and not fewer than the toilets required by law must be provided. If authorized by law and urinals are substituted for toilets, the substitution must be done as specified by law.

(2) The food establishment permit holder shall ensure that toilet rooms are conveniently located within 200 feet of the food establishment and accessible to employees during all hours of operation.

(3) The food establishment permit holder shall ensure that toilet rooms are conveniently located and accessible to patrons during all hours of operation if:

(a) The establishment has customer seating for on-premises consumption; and

(b) The establishment was constructed or extensively remodeled after May 1, 1992.

(4) Toilet rooms in food establishments may be used jointly by patrons and employees, provided patrons accessing the toilet rooms are excluded from food preparation areas and food storage areas with food that is not packaged.

#### NEW SECTION

**WAC 246-215-05240 Service sink (2009 FDA Food Code 5-203.13).** (1) At least one service sink or one curbed cleaning facility equipped with a floor drain must be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(2) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

#### NEW SECTION

**WAC 246-215-05245 Backflow prevention device, when required (2009 FDA Food Code 5-203.14).** A plumbing system must be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

(1) Providing an air gap as specified under WAC 246-215-05215; or

(2) Installing an approved backflow prevention device as specified under WAC 246-215-05220.

#### NEW SECTION

**WAC 246-215-05250 Backflow prevention device, carbonator (2009 FDA Food Code 5-203.15).** (1) If not provided with an air gap as specified under WAC 246-215-05215, a dual check valve with an intermediate vent preceded by a screen of not less than 100 mesh to one inch (100 mesh to 25.4 mm) must be installed upstream from a carbonating device and downstream from any copper in the water supply line.

(2) A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under subsection (1) of this section.

#### NEW SECTION

**WAC 246-215-05255 Location and placement of handwashing sinks (2009 FDA Food Code 5-204.11).** A handwashing sink must be located:

(1) To allow convenient use by employees;

(2) Within 25 feet of food preparation, food dispensing, and warewashing areas; and

(3) In, or immediately adjacent to, toilet rooms.

#### NEW SECTION

**WAC 246-215-05260 Location and placement of backflow prevention device (2009 FDA Food Code 5-204.12).** A backflow prevention device must be located so that it can be serviced and maintained.

#### NEW SECTION

**WAC 246-215-05265 Location and placement of conditioning device (2009 FDA Food Code 5-204.13).** A water filter, screen, and other water conditioning device installed on water lines must be located to facilitate disassembly for periodic servicing and cleaning.

#### NEW SECTION

**WAC 246-215-05270 Operation and maintenance—Using a handwashing sink (2009 FDA Food Code 5-205.11).** (1) A handwashing sink must be maintained so that it is accessible at all times for employee use.

(2) A handwashing sink may not be used for purposes other than handwashing.

(3) An automatic handwashing facility must be used in accordance with manufacturer's instructions.

#### NEW SECTION

**WAC 246-215-05275 Operation and maintenance—Prohibiting a cross connection (2009 FDA Food Code 5-205.12).** (1) A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(2) The piping of a nondrinking water system must be durably identified so that it is readily distinguishable from piping that carries drinking water.

NEW SECTION

**WAC 246-215-05280 Operation and maintenance—Scheduling inspection and service for water system device (2009 FDA Food Code 5-205.13).** A device such as a water treatment device or backflow preventer must be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service must be maintained by the person in charge.

NEW SECTION

**WAC 246-215-05285 Operation and maintenance—Water reservoir of fogging devices, cleaning (2009 FDA Food Code 5-205.14).** (1) A reservoir that is used to supply water to a device such as a produce fogger must be:

(a) Maintained in accordance with manufacturer's specifications; and

(b) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection (2) of this section, whichever is more stringent.

(2) Cleaning procedures must include at least the following steps and must be conducted at least once a week:

(a) Draining and complete disassembly of the water and aerosol contact parts;

(b) Brush cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(c) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(d) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.

NEW SECTION

**WAC 246-215-05290 Operation and maintenance—System maintained in good repair (2009 FDA Food Code 5-205.15).** A plumbing system must be:

- (1) Repaired according to law; and
- (2) Maintained in good repair.

**Subpart C - Mobile Water Tank and Mobile Food Establishment Water Tank**

NEW SECTION

**WAC 246-215-05300 Materials—Approved (2009 FDA Food Code 5-301.11).** Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances must be:

- (1) Safe;
- (2) Durable, corrosion-resistant and nonabsorbent; and
- (3) Finished to have a smooth, easily cleanable surface.

NEW SECTION

**WAC 246-215-05305 Design and construction—Enclosed system, sloped to drain (2009 FDA Food Code 5-302.11).** A mobile water tank must be:

- (1) Enclosed from the filling inlet to the discharge outlet; and
- (2) Sloped to an outlet that allows complete drainage of the tank.

NEW SECTION

**WAC 246-215-05310 Design and construction—Inspection and cleaning port, protected and secured (2009 FDA Food Code 5-302.12).** If a water tank is designed with an access port for inspection and cleaning, the opening must be in the top of the tank and:

- (1) Flanged upward at least one-half inch (13 mm); and
- (2) Equipped with a port cover assembly that is:
  - (a) Provided with a gasket and a device for securing the cover in place; and
  - (b) Flanged to overlap the opening and sloped to drain.

NEW SECTION

**WAC 246-215-05315 Design and construction—"V" type threads, use limitation (2009 FDA Food Code 5-302.13).** A fitting with "V" type threads on a water tank or inlet or outlet must be allowed only when a hose is permanently attached.

NEW SECTION

**WAC 246-215-05320 Design and construction—Tank vent, protected (2009 FDA Food Code 5-302.14).** If provided, a water tank vent must terminate in a downward direction and must be covered with:

- (1) 16 mesh to one inch (16 mesh to 25.4 mm) screen or equivalent when the vent is in a protected area; or
- (2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

NEW SECTION

**WAC 246-215-05325 Design and construction—Inlet and outlet, sloped to drain (2009 FDA Food Code 5-302.15).** (1) A water tank and its inlet and outlet must be sloped to drain.

(2) A water tank inlet must be positioned so that it is protected from contaminants such as waste discharge, road dust, oil or grease.

NEW SECTION

**WAC 246-215-05330 Design and construction—Hose, construction and identification (2009 FDA Food Code 5-302.16).** A hose used for conveying drinking water from a water tank must be:

- (1) Safe;
- (2) Durable, corrosion-resistant, and nonabsorbent;
- (3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- (4) Finished with a smooth interior surface; and
- (5) Clearly and durably identified as to its use if not permanently attached.

NEW SECTION

**WAC 246-215-05335 Numbers and capacities—Filter, compressed air (2009 FDA Food Code 5-303.11).** A filter that does not pass oil or oil vapors must be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

NEW SECTION

**WAC 246-215-05340 Numbers and capacities—Protective cover or device (2009 FDA Food Code 5-303.12).** A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device must be provided for a water inlet, outlet and hose.

NEW SECTION

**WAC 246-215-05345 Numbers and capacities—Mobile food establishment tank inlet (2009 FDA Food Code 5-303.13).** A mobile food establishment's water tank inlet must be:

- (1) Three-fourths inch (19.1 mm) in inner diameter or less; and
- (2) Provided with a hose connection of a size or type that prevents its use for any other service.

NEW SECTION

**WAC 246-215-05350 Operation and maintenance—System flushing and sanitation (2009 FDA Food Code 5-304.11).** A water tank, pump, and hoses must be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

NEW SECTION

**WAC 246-215-05355 Operation and maintenance—Using a pump and hoses, backflow prevention (2009 FDA Food Code 5-304.12).** A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

NEW SECTION

**WAC 246-215-05360 Operation and maintenance—Protecting inlet, outlet, and hose fitting (2009 FDA Food Code 5-304.13).** If not in use, a water tank and hose inlet and outlet fitting must be protected using a cover or device as specified under WAC 246-215-05340.

NEW SECTION

**WAC 246-215-05365 Operation and maintenance—Tank, pump, and hoses, dedication (2009 FDA Food Code 5-304.14).** (1) Except as specified in subsection (2) of this section, a water tank, pump, and hoses used for conveying drinking water must be used for no other purpose.

(2) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

**Subpart D - Sewage, Other Liquid Waste, and Rainwater**NEW SECTION

**WAC 246-215-05400 Mobile holding tank—Capacity and drainage (2009 FDA Food Code 5-401.11).** A sewage holding tank in a mobile food establishment must be:

- (1) Sized fifteen percent larger in capacity than the water supply tank; and
- (2) Sloped to a drain that is one inch (25 mm) in inner diameter or greater, equipped with a shutoff valve.

NEW SECTION

**WAC 246-215-05405 Retention, drainage, and delivery design, construction, and installation—Establishment drainage system (2009 FDA Food Code 5-402.10).** Food establishment drainage systems, including grease traps, that convey sewage must be designed and installed as specified under WAC 246-215-05205(1).

NEW SECTION

**WAC 246-215-05410 Retention, drainage, and delivery design, construction, and installation—Backflow prevention (2009 FDA Food Code 5-402.11).** (1) Except as specified in subsections (2), (3), and (4) of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

(2) Subsection (1) of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(3) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 mm) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(4) If allowed by law, a warewashing sink may have a direct connection.

NEW SECTION

**WAC 246-215-05415 Retention, drainage, and delivery location and placement—Grease trap (2009 FDA Food Code 5-402.12).** If used, a grease trap must be located to be easily accessible for cleaning.

NEW SECTION

**WAC 246-215-05420 Retention, drainage, and delivery operation and maintenance—Conveying sewage (2009 FDA Food Code 5-402.13).** Sewage must be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

NEW SECTION

**WAC 246-215-05425 Retention, drainage, and delivery operation and maintenance—Removing mobile food establishment wastes (2009 FDA Food Code 5-402.14).** Sewage and other liquid wastes must be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

NEW SECTION

**WAC 246-215-05430 Retention, drainage, and delivery operation and maintenance—Flushing a waste retention tank (2009 FDA Food Code 5-402.15).** A tank for liquid waste retention must be thoroughly flushed and drained in a sanitary manner during the servicing operation.

NEW SECTION

**WAC 246-215-05435 Disposal facility design and construction—Approved sewage disposal system (2009 FDA Food Code 5-403.11).** Sewage must be disposed through an approved facility that is:

- (1) A public sewage treatment plant; or
- (2) A sewage disposal system that is sized, constructed, maintained and operated according to law.

NEW SECTION

**WAC 246-215-05440 Disposal facility design and construction—Other liquid wastes and rainwater (2009 FDA Food Code 5-403.12).** Condensate drainage and other nonsewage liquids and rainwater must be drained from point of discharge to disposal according to law.

**Subpart E - Refuse, Recyclables, and Returnables**NEW SECTION

**WAC 246-215-05500 Facilities on the premises, materials, design, construction and installation—Indoor storage area (2009 FDA Food Code 5-501.10).** If located within the food establishment, a storage area for refuse, recyclables and returnables must meet the requirements specified under WAC 246-215-06100, 246-215-06200, 246-215-06235, 246-215-06260, and 246-215-06265.

NEW SECTION

**WAC 246-215-05505 Facilities on the premises, materials, design, construction and installation—Outdoor storage surface (2009 FDA Food Code 5-501.11).** An outdoor storage surface for refuse, recyclables, and returnables must be constructed of nonabsorbent material such as concrete or asphalt and must be smooth, durable and sloped to drain.

NEW SECTION

**WAC 246-215-05510 Facilities on the premises, materials, design, construction and installation—Out-**

**door enclosure (2009 FDA Food Code 5-501.12).** If used, an outdoor enclosure for refuse, recyclables, and returnables must be constructed of durable and cleanable materials.

NEW SECTION

**WAC 246-215-05515 Facilities on the premises, materials, design, construction and installation—Receptacles (2009 FDA Food Code 5-501.13).** (1) Except as specified in subsection (2) of this section, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue must be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

NEW SECTION

**WAC 246-215-05520 Facilities on the premises, materials, design, construction and installation—Receptacles in vending machines (2009 FDA Food Code 5-501.14).** A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

NEW SECTION

**WAC 246-215-05525 Facilities on the premises, materials, design, construction and installation—Outside receptacles (2009 FDA Food Code 5-501.15).** (1) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment must be designed and constructed to have tight fitting lids, doors, or covers.

(2) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor must be installed so that accumulation of debris and insect and other rodent attraction and harborage are minimized and effective cleaning is facilitated around, and if the unit is not installed flush with the base pad, under the unit.

NEW SECTION

**WAC 246-215-05530 Facilities on the premises, numbers and capacities—Storage areas, rooms, and receptacles, capacity and availability (2009 FDA Food Code 5-501.16).** (1) An inside storage room and area and outside storage area and enclosure, and receptacles must be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(2) A receptacle must be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at handwashing sinks, a waste receptacle must be located at each handwashing sink or group of adjacent handwashing sinks.

NEW SECTION

**WAC 246-215-05535 Facilities on the premises, numbers and capacities—Toilet room receptacle, covered (2009 FDA Food Code 5-501.17).** A toilet room used by females must be provided with a covered receptacle for sanitary napkins.

NEW SECTION

**WAC 246-215-05540 Facilities on the premises, numbers and capacities—Cleaning implements and supplies (2009 FDA Food Code 5-501.18).** (1) Except as specified in subsection (2) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent must be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

(2) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

NEW SECTION

**WAC 246-215-05545 Facilities on the premises, location and placement—Storage areas, redeeming machines, receptacles and waste handling units, location (2009 FDA Food Code 5-501.19).** (1) An area designated for refuse, recyclables, returnables, and, except as specified in subsection (2) of this section, a redeeming machine for recyclables or returnables must be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

(2) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(3) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

NEW SECTION

**WAC 246-215-05550 Facilities on the premises, operation and maintenance—Storing refuse, recyclables, and returnables (2009 FDA Food Code 5-501.110).** Refuse, recyclables and returnables must be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

NEW SECTION

**WAC 246-215-05555 Facilities on the premises, operation and maintenance—Areas, enclosures, and receptacles, good repair (2009 FDA Food Code 5-501.111).** Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables must be maintained in good repair.

NEW SECTION

**WAC 246-215-05560 Facilities on the premises, operation and maintenance—Outside storage prohibitions (2009 FDA Food Code 5-501.112).** (1) Except as specified in subsection (2) of this section, refuse receptacles not meeting the requirements specified under WAC 246-215-05515(1) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.

(2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

NEW SECTION

**WAC 246-215-05565 Facilities on the premises, operation and maintenance—Covering receptacles (2009 FDA Food Code 5-501.113).** Receptacles and waste handling units for refuse, recyclables, and returnables must be kept covered:

(1) Inside the food establishment if the receptacles and units:

(a) Contain food residue and are not in continuous use; or

(b) After they are filled; and

(2) With tight fitting lids or doors if kept outside the food establishment.

NEW SECTION

**WAC 246-215-05570 Facilities on the premises, operation and maintenance—Using drain plugs (2009 FDA Food Code 5-501.114).** Drains in receptacles and waste handling units for refuse, recyclables, and returnables must have drain plugs in place.

NEW SECTION

**WAC 246-215-05575 Facilities on the premises, operation and maintenance—Maintaining refuse areas and enclosures (2009 FDA Food Code 5-501.115).** A storage area and enclosure for refuse, recyclables, and returnables must be maintained free of unnecessary items, as specified under WAC 246-215-06565, and clean.

NEW SECTION

**WAC 246-215-05580 Facilities on the premises, operation and maintenance—Cleaning receptacles (2009 FDA Food Code 5-501.116).** (1) Receptacles and waste handling units for refuse, recyclables, and returnables must be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water must be disposed of as specified under WAC 246-215-05420.

(2) Soiled receptacles and waste handling units for refuse, recyclables, and returnables must be cleaned at a fre-

quency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

#### NEW SECTION

**WAC 246-215-05585 Removal—Frequency (2009 FDA Food Code 5-502.11).** Refuse, recyclables, and returnables must be removed from the premises at a frequency that minimizes the development of objectionable odors and other conditions that attract or harbor insects and rodents.

#### NEW SECTION

**WAC 246-215-05590 Removal—Receptacles or vehicles (2009 FDA Food Code 5-502.12).** Refuse, recyclables, and returnables must be removed from the premises by way of:

- (1) Portable receptacles that are constructed and maintained according to law; or
- (2) A transport vehicle that is constructed, maintained, and operated according to law.

#### NEW SECTION

**WAC 246-215-05595 Facilities for disposal and recycling—Community or individual facility (2009 FDA Food Code 5-503.11).** Solid waste not disposed of through the sewage system such as through grinders and pulpers must be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste must be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

### **PART 6: PHYSICAL FACILITIES**

#### **Subpart A - Materials for Construction and Repair**

#### NEW SECTION

**WAC 246-215-06100 Indoor areas—Surface characteristics (2009 FDA Food Code 6-101.11).** (1) Except as specified in subsection (2) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use must be:

- (a) Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
- (b) Closely woven and easily cleanable carpet for carpeted areas; and
- (c) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.
  - (2) In a temporary food establishment:
    - (a) If graded to drain, a floor may be concrete, machine laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other approved materials that are effectively treated to control dust and mud.

(b) Walls and ceilings must be constructed from a material that protects the interior from the weather and windblown dust and debris.

#### NEW SECTION

**WAC 246-215-06105 Outdoor areas—Surface characteristics (2009 FDA Food Code 6-102.11).** (1) The outdoor walking and driving areas must be surfaced with concrete, asphalt or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(2) Exterior surfaces of buildings and mobile food establishments must be of weather-resistant materials and must comply with law.

(3) Outdoor storage areas for refuse, recyclables, or returnables must be of materials specified under WAC 246-215-05505 and 246-215-05510.

#### **Subpart B - Design, Construction and Installation**

#### NEW SECTION

**WAC 246-215-06200 Cleanability—Floors, walls and ceilings (2009 FDA Food Code 6-201.11).** Except as specified under WAC 246-215-06215 and except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings and ceilings must be designed, constructed, and installed so they are smooth and easily cleanable.

#### NEW SECTION

**WAC 246-215-06205 Cleanability—Floors, walls, and ceilings, utility lines (2009 FDA Food Code 6-201.12).** (1) Utility service lines and pipes may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes must be installed so they do not obstruct or prevent cleaning of the floors, walls or ceilings.

(3) Exposed horizontal utility service lines and pipes may not be installed on the floor.

#### NEW SECTION

**WAC 246-215-06210 Cleanability—Floor and wall junctures, covered and enclosed or sealed (2009 FDA Food Code 6-201.13).** (1) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures must be covered and closed to no larger than one thirty-second inch (1 mm).

(2) The floors in food establishments in which water flush cleaning methods are used must be provided with drains and be graded to drain, and the floor and wall junctures must be covered and sealed.

#### NEW SECTION

**WAC 246-215-06215 Cleanability—Floor carpeting, restriction and installation (2009 FDA Food Code 6-201.14).** (1) A floor covering such as carpeting or similar

material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing sinks, toilets and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified under subsection (1) of this section, it must be:

(a) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(b) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

#### NEW SECTION

**WAC 246-215-06220 Cleanability—Floor covering, mats and duckboards (2009 FDA Food Code 6-201.15).** Mats and duckboards must be designed to be removable and easily cleanable.

#### NEW SECTION

**WAC 246-215-06225 Cleanability—Wall and ceiling coverings and coatings (2009 FDA Food Code 6-201.16).**

(1) Wall and ceiling covering materials must be attached so that they are easily cleanable.

(2) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction must be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

#### NEW SECTION

**WAC 246-215-06230 Cleanability—Walls and ceilings, attachments (2009 FDA Food Code 6-201.17).**

(1) Except as specified in subsection (2) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments must be easily cleanable.

(2) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

#### NEW SECTION

**WAC 246-215-06235 Cleanability—Walls and ceilings, studs, joists, and rafters (2009 FDA Food Code 6-201.18).** Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

#### NEW SECTION

**WAC 246-215-06240 Functionality—Light bulbs, protective shielding (2009 FDA Food Code 6-202.11).** (1) Except as specified in subsection (2) of this section, light bulbs must be shielded, coated, or otherwise shatter-resistant

in areas where there is exposed food, clean equipment, utensils, and linens, or unwrapped single-service and single-use articles.

(2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if:

(a) The integrity of the packages cannot be affected by broken glass falling into them; and

(b) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) An infrared or other heat lamp must be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

#### NEW SECTION

**WAC 246-215-06245 Functionality—Heating, ventilating, air conditioning system vents (2009 FDA Food Code 6-202.12).** Heating, ventilating, and air conditioning systems must be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment or utensils.

#### NEW SECTION

**WAC 246-215-06250 Functionality—Insect control devices, design and installation (2009 FDA Food Code 6-202.13).**

(1) Insect control devices that are used to electrocute or stun flying insects must be designed to retain the insect within the device.

(2) Insect control devices must be installed so that:

(a) The devices are not located over a food preparation area; and

(b) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and linens, and unwrapped single-service or single-use articles.

#### NEW SECTION

**WAC 246-215-06255 Functionality—Toilet rooms, enclosed (2009 FDA Food Code 6-202.14).**

Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises must be completely enclosed and provided with a tight-fitting and self-closing door.

#### NEW SECTION

**WAC 246-215-06260 Functionality—Outer openings, protected (2009 FDA Food Code 6-202.15).**

(1) Except as specified in subsections (2) through (5) of this section, outer openings of a food establishment must be protected against the entry of insects and rodents by:

(a) Filling or closing holes and other gaps along floors, walls, and ceilings;

(b) Closed, tight-fitting windows; and

(c) Solid, self-closing, tight-fitting doors.

(2) Subsection (1) of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport or office building, or into an attached structure such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are:

(a) Solid and tight-fitting;

(b) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and

(c) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in subsections (2) and (5) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under subsection (1) of this section, the openings must be protected against entry of insects and rodents by:

(a) 16 mesh to one inch (16 mesh to 25.4 mm) screens;

(b) Properly designed and installed air curtains to control flying insects; or

(c) Other effective means.

(5) Subsection (4) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

#### NEW SECTION

**WAC 246-215-06265 Functionality—Exterior walls and roofs, protective barrier (2009 FDA Food Code 6-202.16).** Perimeter walls and roofs of a food establishment must effectively protect the establishment from the weather and entry of insects, rodents, and other animals.

#### NEW SECTION

**WAC 246-215-06270 Functionality—Outdoor food vending areas, overhead protection (2009 FDA Food Code 6-202.17).** Except for machines that vend canned beverages, if located outside, a machine used to vend food must be provided with overhead protection.

#### NEW SECTION

**WAC 246-215-06275 Functionality—Outdoor servicing areas, overhead protection (2009 FDA Food Code 6-202.18).** Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas must be provided with overhead protection.

#### NEW SECTION

**WAC 246-215-06280 Functionality—Outdoor walking and driving surfaces, graded to drain (2009 FDA Food**

**Code 6-202.19).** Exterior walking and driving services must be graded to drain.

#### NEW SECTION

**WAC 246-215-06285 Functionality—Outdoor refuse areas (2009 FDA Food Code 6-202.110).** Outdoor refuse areas must be constructed in accordance with law.

#### NEW SECTION

**WAC 246-215-06290 Functionality—Private homes and living or sleeping quarters, use prohibition (2009 FDA Food Code 6-202.111).** A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.

#### NEW SECTION

**WAC 246-215-06295 Functionality—Living or sleeping quarters, separation (2009 FDA Food Code 6-202.112).** Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers must be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

### **Subpart C - Numbers and Capacities**

#### NEW SECTION

**WAC 246-215-06300 Handwashing facilities—Minimum number (2009 FDA Food Code 6-301.10).** Handwashing facilities must be provided as specified under WAC 246-215-05230.

#### NEW SECTION

**WAC 246-215-06305 Handwashing facilities—Handwashing cleanser, availability (2009 FDA Food Code 6-301.11).** Each handwashing sink or group of two adjacent handwashing sinks must be provided with a supply of hand cleaning liquid, powder, or bar soap.

#### NEW SECTION

**WAC 246-215-06310 Handwashing facilities—Hand-drying provision (2009 FDA Food Code 6-301.12).** Each handwashing sink or group of adjacent handwashing sinks must be provided with:

(1) Individual, disposable towels;

(2) A continuous towel system that supplies the user with a clean towel;

(3) A heated-air hand-drying device; or

(4) A hand-drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

NEW SECTION

**WAC 246-215-06315 Handwashing facilities—Handwashing aids and devices, use restriction (2009 FDA Food Code 6-301.13).** A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified under WAC 246-215-06305, 246-215-06310, and 246-215-05530(3).

NEW SECTION

**WAC 246-215-06320 Handwashing facilities—Handwashing signage (2009 FDA Food Code 6-301.14).** A sign or poster that notifies food employees to wash their hands must be provided at all handwashing sinks used by food employees and must be clearly visible to food employees.

NEW SECTION

**WAC 246-215-06325 Handwashing facilities—Disposable towels, waste receptacle (2009 FDA Food Code 6-301.20).** A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels must be provided with a waste receptacle as specified under WAC 246-215-05530(3).

NEW SECTION

**WAC 246-215-06330 Toilets and urinals—Minimum number (2009 FDA Food Code 6-302.10).** Toilets and urinals must be provided as specified under WAC 246-215-05235.

NEW SECTION

**WAC 246-215-06335 Toilets and urinals—Toilet tissue, availability (2009 FDA Food Code 6-302.11).** A supply of toilet tissue must be available at each toilet.

NEW SECTION

**WAC 246-215-06340 Lighting—Intensity (2009 FDA Food Code 6-303.11).** The light intensity must be:

(1) At least 10 foot candles (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(2) At least 20 foot candles (215 lux):

(a) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

(b) Inside equipment such as reach-in and under-counter refrigerators;

(c) At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(3) At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with uten-

sils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

NEW SECTION

**WAC 246-215-06345 Ventilation—Mechanical (2009 FDA Food Code 6-304.11).** If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes, mechanical ventilation of sufficient capacity must be provided.

NEW SECTION

**WAC 246-215-06350 Dressing areas and lockers—Designation (2009 FDA Food Code 6-305.11).** (1) Dressing rooms or dressing areas must be designed if employees routinely change their clothes in the establishment.

(2) Lockers or other suitable facilities must be provided for the orderly storage of employees' clothing and other possessions.

NEW SECTION

**WAC 246-215-06355 Service sinks—Availability (2009 FDA Food Code 6-306.10).** A service sink or curbed cleaning facility must be provided as specified under WAC 246-215-05240.

**Subpart D - Location and Placement**NEW SECTION

**WAC 246-215-06400 Handwashing facilities—Conveniently located (2009 FDA Food Code 6-401.10).** Handwashing sinks must be conveniently located as specified under WAC 246-215-05255.

NEW SECTION

**WAC 246-215-06405 Toilet rooms—Convenience and accessibility (2009 FDA Food Code 6-402.11).** Toilet rooms must be conveniently located and accessible to employees during all hours of operation.

NEW SECTION

**WAC 246-215-06410 Employee accommodations—Designated areas (2009 FDA Food Code 6-403.11).** (1) Areas designated for employees to eat, drink, and use tobacco must be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(2) Lockers or other suitable facilities must be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

NEW SECTION

**WAC 246-215-06415 Distressed merchandise—Segregation and location (2009 FDA Food Code 6-404.11).** Products that are held by the permit holder for credit,

redemption, or return to the distributor, such as damaged, spoiled, or recalled products, must be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-06420 Refuse, recyclables, and returnables—Receptacles, waste handling units, and designated storage areas (2009 FDA Food Code 6-405.10).** Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers must be located as specified under WAC 246-215-05545.

**Subpart E - Maintenance and Operation: Premises, Structures, Attachments, and Fixtures**

NEW SECTION

**WAC 246-215-06500 Methods—Repairing (2009 FDA Food Code 6-501.11).** Physical facilities must be maintained in good repair.

NEW SECTION

**WAC 246-215-06505 Methods—Cleaning, frequency and restrictions (2009 FDA Food Code 6-501.12).** (1) Physical facilities must be cleaned as often as necessary to keep them clean.

(2) Except for cleaning that is necessary due to a spill or other accident, cleaning must be done during periods when the least amount of food is exposed such as after closing.

NEW SECTION

**WAC 246-215-06510 Methods—Cleaning floors, dustless methods (2009 FDA Food Code 6-501.13).** (1) Except as specified in subsection (2) of this section, only dustless methods of cleaning must be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

- (a) Without the use of dust-arresting compounds; and
- (b) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

NEW SECTION

**WAC 246-215-06515 Methods—Cleaning ventilation systems, nuisance and discharge prohibition (2009 FDA Food Code 6-501.14).** (1) Intake and exhaust air ducts must be cleaned and filters changed so that they are not a source of contamination by dust, dirt, and other materials.

(2) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

NEW SECTION

**WAC 246-215-06520 Methods—Cleaning maintenance tools, preventing contamination (2009 FDA Food Code 6-501.15).** Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

NEW SECTION

**WAC 246-215-06525 Methods—Drying mops (2009 FDA Food Code 6-501.16).** After use, mops must be placed in a position that allows them to air dry without soiling walls, equipment, or supplies.

NEW SECTION

**WAC 246-215-06530 Methods—Absorbent materials on floors, use limitations (2009 FDA Food Code 6-501.17).** Except as specified under WAC 246-215-06510(2), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

NEW SECTION

**WAC 246-215-06535 Methods—Cleaning of plumbing fixtures (2009 FDA Food Code 6-501.18).** Plumbing fixtures such as handwashing sinks, toilets, and urinals must be cleaned as often as necessary to keep them clean.

NEW SECTION

**WAC 246-215-06540 Methods—Closing toilet room doors (2009 FDA Food Code 6-501.19).** Except during cleaning and maintenance operations, toilet room doors as specified under WAC 246-215-06255 must be kept closed.

NEW SECTION

**WAC 246-215-06545 Methods—Using dressing rooms and lockers (2009 FDA Food Code 6-501.110).** (1) Dressing rooms must be used by employees if the employees regularly change their clothes in the establishment.

(2) Lockers or other suitable facilities must be used for the orderly storage of employee clothing and other possessions.

NEW SECTION

**WAC 246-215-06550 Methods—Controlling pests (2009 FDA Food Code 6-501.111).** The premises must be maintained free of infestations of insects, rodents, and other pests such that there is not a breeding population of pests in the facility. The presence of insects, rodents, and other pests must be controlled to minimize their presence on the premises by:

- (1) Routinely inspecting incoming shipments of food and supplies;
- (2) Routinely inspecting the premises for evidence of pests;

(3) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under WAC 246-215-07210, 246-215-07250, and 246-215-07255; and

(4) Eliminating harborage conditions.

#### NEW SECTION

**WAC 246-215-06555 Methods—Removing dead or trapped birds, insects, rodents, and other pests (2009 FDA Food Code 6-501.112).** Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

#### NEW SECTION

**WAC 246-215-06560 Methods—Storing maintenance tools (2009 FDA Food Code 6-501.113).** Maintenance tools such as brooms, mops, vacuum cleaners, and similar items must be:

(1) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(2) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

#### NEW SECTION

**WAC 246-215-06565 Methods—Maintaining premises, unnecessary items and litter (2009 FDA Food Code 6-501.114).** The premises must be free of:

(1) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is non-functional or no longer used; and

(2) Litter.

#### NEW SECTION

**WAC 246-215-06570 Methods—Prohibiting animals (2009 FDA Food Code 6-501.115).** (1) Except as specified in subsections (2) and (3) of this section, live animals may not be allowed on the premises of a food establishment.

(2) Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, linens; and unwrapped single-service and single-use articles cannot result:

(a) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(b) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(c) In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

(d) Pets in the common areas of institutional care facilities such as nursing homes, assisted living facilities, group

homes, or residential care facilities at times other than during meals if:

(i) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(ii) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(e) In areas that are not used for food preparation, storage, sales, display or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

## **PART 7: POISONOUS OR TOXIC MATERIALS**

### **Subpart A - Labeling and Identification**

#### NEW SECTION

**WAC 246-215-07100 Original containers—Identifying information, prominence (2009 FDA Food Code 7-101.11).** Containers of poisonous or toxic materials and personal care items must bear a legible manufacturer's label.

#### NEW SECTION

**WAC 246-215-07105 Working containers—Common name (2009 FDA Food Code 7-102.11).** Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies must be clearly and individually identified with the common name of the material.

### **Subpart B - Operational Supplies and Applications**

#### NEW SECTION

**WAC 246-215-07200 Storage—Separation (2009 FDA Food Code 7-201.11).** Poisonous or toxic materials must be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) Separating the poisonous or toxic materials by spacing or partitioning; and

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This subsection does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-07205 Presence and use—Restriction (2009 FDA Food Code 7-202.11).** (1) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, may be allowed in a food establishment.

(2) Subsection (1) of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

NEW SECTION

**WAC 246-215-07210 Presence and use—Conditions of use (2009 FDA Food Code 7-202.12).** Poisonous or toxic materials must be:

(1) Used according to:

(a) Law and this chapter;

(b) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;

(c) The conditions of certification, if certification is required, for use of the pest control materials; and

(d) Additional conditions that may be established by the regulatory authority; and

(2) Applied so that:

(a) A hazard to employees or other persons is not constituted; and

(b) Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:

(i) Removing the items;

(ii) Covering the items with impermeable covers; or

(iii) Taking other appropriate preventative actions; and

(iv) Cleaning and sanitizing equipment and utensils after the application.

(3) A restricted use pesticide must be applied only by an applicator certified as defined in 7 U.S.C. 136 Definitions, (e) Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.

NEW SECTION

**WAC 246-215-07215 Container prohibitions—Poisonous or toxic material containers (2009 FDA Food Code 7-203.11).** A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

NEW SECTION

**WAC 246-215-07220 Chemicals—Sanitizers, criteria (2009 FDA Food Code 7-204.11).** Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces must meet the requirements specified in 40 C.F.R. 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food contact surface sanitizing solutions).

NEW SECTION

**WAC 246-215-07225 Chemicals—Chemicals for washing, treatment, storage, and processing fruits and vegetables, criteria (2009 FDA Food Code 7-204.12).** (1) Chemicals used to wash or peel raw, whole fruits and vegetables must meet the requirements specified in 21 C.F.R. 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.

(2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment must meet the requirements specified in 21 C.F.R. 173.368 Ozone.

NEW SECTION

**WAC 246-215-07230 Chemicals—Boiler water additives, criteria (2009 FDA Food Code 7-204.13).** Chemicals used as boiler water additives must meet the requirements specified in 21 C.F.R. 173.310 Boiler Water Additives.

NEW SECTION

**WAC 246-215-07235 Chemicals—Drying agents, criteria (2009 FDA Food Code 7-204.14).** Drying agents used in conjunction with sanitization must:

(1) Contain only components that are listed as one of the following:

(a) Generally recognized as safe for use in food as specified in 21 C.F.R. 182 - Substances Generally Recognized as Safe, or 21 C.F.R. 184 - Direct Food Substances Affirmed as Generally Recognized as Safe;

(b) Generally recognized as safe for the intended use as specified in 21 C.F.R. 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe;

(c) Approved for use as a drying agent under a prior sanction specified in 21 C.F.R. 181 - Prior Sanctioned Food Ingredients;

(d) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 C.F.R. Parts 175-178; or

(e) Approved for use as a drying agent under the threshold of regulation process established by 21 C.F.R. 170.39 Threshold of Regulation For Substances Used In Food-Contact Articles; and

(2) When sanitization is with chemicals, the approval required under subsection (1)(c) or (e) of this section or the regulation as an indirect food additive required under subsection (1)(d) of this section, must be specifically for use with chemical sanitizing solutions.

NEW SECTION

**WAC 246-215-07240 Lubricants—Incidental food contact, criteria (2009 FDA Food Code 7-205.11).** Lubricants must meet the requirements specified in 21 C.F.R. 178.3570 Lubricants with Incidental Food Contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.

NEW SECTION

**WAC 246-215-07245 Pesticides—Restricted use pesticides, criteria (2009 FDA Food Code 7-206.11).** Restricted use pesticides specified under WAC 246-215-07210(3) must meet the requirements specified in 40 C.F.R. 152 Subpart I - Classification of Pesticides.

NEW SECTION

**WAC 246-215-07250 Pesticides—Rodent bait stations (2009 FDA Food Code 7-206.12).** Rodent bait must be contained in a covered, tamper-resistant bait station.

NEW SECTION

**WAC 246-215-07255 Pesticides—Tracking powders, pest control and monitoring (2009 FDA Food Code 7-206.13).** (1) Except as specified in subsection (2) of this section, a tracking powder pesticide may not be used in a food establishment.

(2) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-07260 Medicines—Restriction and storage (2009 FDA Food Code 7-207.11).** (1) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees may be allowed in a food establishment.

(2) Medicines that are in a food establishment for the employees' use must be labeled as specified under WAC 246-215-07100 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-07265 Medicines—Refrigerated medicines, storage (2009 FDA Food Code 7-207.12).** Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator must be:

(1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(2) Located so they are inaccessible to children.

NEW SECTION

**WAC 246-215-07270 First-aid supplies—Storage (2009 FDA Food Code 7-208.11).** First-aid supplies that are in a food establishment for the employees' use must be:

(1) Labeled as specified under WAC 246-215-07100; and

(2) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.

NEW SECTION

**WAC 246-215-07275 Other personal care items—Storage (2009 FDA Food Code 7-209.11).** Except as specified under WAC 246-215-07265 and 246-215-07270, employees shall store their personal care items in facilities as specified under WAC 246-215-06350(2).

**Subpart C - Stock and Retail Sale**NEW SECTION

**WAC 246-215-07300 Storage and display—Separation (2009 FDA Food Code 7-301.11).** Poisonous or toxic materials must be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(1) Separating the poisonous or toxic materials by spacing or partitioning; and

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

**PART 8: COMPLIANCE AND ENFORCEMENT****Subpart A - Applicability**NEW SECTION

**WAC 246-215-08100 Use for intended purpose—Public health protection (2009 FDA Food Code 8-101.10).** (1) The regulatory authority shall apply this chapter to promote its underlying purpose, as specified under WAC 246-215-01105, of safeguarding public health and ensuring that food is safe, not adulterated, and honestly presented when offered to the consumer.

(2) In enforcing the provision of this chapter, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this chapter based on the following considerations:

(a) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

(b) Whether food contact surfaces comply with Part 4, Subpart A;

(c) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with WAC 246-215-04300; and

(d) The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under WAC 246-215-08350(7).

NEW SECTION

**WAC 246-215-08105 Additional requirements—Preventing health hazards, provision for conditions not addressed (2009 FDA Food Code 8-102.10).** (1) If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this chapter that are authorized by law.

(2) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation must be provided to the permit applicant or permit holder and a copy must be maintained in the regulatory authority's file for the food establishment.

#### NEW SECTION

**WAC 246-215-08110 Variances—Modifications and waivers (2009 FDA Food Code 8-103.10).** The regulatory authority may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under WAC 246-215-08115 in its records for the food establishment.

#### NEW SECTION

**WAC 246-215-08115 Variances—Documentation of proposed variance and justification (2009 FDA Food Code 8-103.11).** Before a variance from a requirement of this chapter is approved, the information that must be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

- (1) A statement of the proposed variance of this chapter requirement citing the relevant section;
- (2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant section will be alternatively addressed by the proposal; and
- (3) A HACCP plan if required as specified under WAC 246-215-08210(1) that includes the information specified under WAC 246-215-08215 as it is relevant to the variance requested.

#### NEW SECTION

**WAC 246-215-08120 Variances—Conformance with approved procedures (2009 FDA Food Code 8-103.12).** If the regulatory authority grants a variance as specified under WAC 246-215-08110, or a HACCP plan is otherwise required as specified under WAC 246-215-08210, the permit holder shall:

- (1) Comply with the HACCP plans and procedures that are submitted as specified under WAC 246-215-08215 and approved as a basis for the modification or waiver; and
- (2) Maintain and provide to the regulatory authority, upon request, records specified under WAC 246-215-08215 (4) and (5) that demonstrate that the following are routinely employed:
  - (a) Procedures for monitoring critical control points;
  - (b) Monitoring of the critical control points;
  - (c) Verification of the effectiveness of the operation or process; and
  - (d) Necessary corrective actions if there is a failure at a critical control point.

### Subpart B - Plan Submission and Approval

#### NEW SECTION

**WAC 246-215-08200 Facility and operating plans—When plans are required (2009 FDA Food Code 8-201.11).** A permit applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

- (1) The construction of a food establishment;
- (2) The conversion of an existing structure for use as a food establishment; or
- (3) The remodeling of a food establishment, a change of type of food establishment, or significant changes to the methods of food preparation or style of service as specified under WAC 246-215-08325(3) if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this chapter.

#### NEW SECTION

**WAC 246-215-08205 Facility and operating plans—Contents of the plans and specifications (2009 FDA Food Code 8-201.12).** The plans and specifications for a food establishment, including a food establishment specified under WAC 246-215-08210, must include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with chapter provisions:

- (1) Intended menu;
- (2) Anticipated volume of food to be stored, prepared, and sold or served;
- (3) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- (5) Evidence that standard procedures that ensure compliance with the requirements of this chapter are developed or are being developed; and
- (6) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

#### NEW SECTION

**WAC 246-215-08210 Facility and operating plans—When a HACCP plan is required (2009 FDA Food Code 8-201.13).** (1) Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under WAC 246-215-08215 and the relevant provisions of this chapter if:

- (a) Submission of a HACCP plan is required according to law;
- (b) A variance is required as specified under WAC 246-215-03400 (4)(d), 246-215-03535, and 246-215-04244(2);
- (c) The regulatory authority determines that a food preparation or processing method requires a variance based on a

plan submittal specified under WAC 246-215-08205, an inspectional finding, or a variance request.

(2) A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under WAC 246-215-03540.

#### NEW SECTION

**WAC 246-215-08215 Facility and operating plans—Contents of a HACCP plan (2009 FDA Food Code 8-201.14).** For a food establishment that is required under WAC 246-215-08210 to have a HACCP plan, the plan and specifications must indicate:

(1) A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;

(2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(a) Ingredients, materials, and equipment used in the preparation of that food; and

(b) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(3) Food employee and supervisory training plan that addresses the food safety issues of concern;

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying:

(a) Each critical control point;

(b) The critical limits for each critical control point;

(c) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;

(d) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;

(e) Action to be taken by the person in charge if the critical limits for each critical control point are not met; and

(f) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(5) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

#### NEW SECTION

**WAC 246-215-08220 Trade secrets (2009 FDA Food Code 8-202.10).** The regulatory authority shall treat as confidential in accordance with law, information that meets the requirements specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under WAC 246-215-08205 and 246-215-08215.

#### NEW SECTION

**WAC 246-215-08225 Construction inspection and approval—Preoperational inspections (2009 FDA Food Code 8-203.10).** The regulatory authority shall conduct one

or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under WAC 246-215-08205(5), and is in compliance with the law and this chapter.

### Subpart C - Permit to Operate

#### NEW SECTION

**WAC 246-215-08300 Requirement—Prerequisite for operation (2009 FDA Food Code 8-301.11).** A person may not operate a food establishment without a valid permit to operate issued by the regulatory authority.

#### NEW SECTION

**WAC 246-215-08305 Exempt from permit (2009 FDA Food Code 8-301.12).** (1) The regulatory authority may exempt a person from the provisions of WAC 246-215-08600(1) and 246-215-08300 of this chapter in order to operate without a food establishment permit, if the person meets the other provisions of this chapter, including not using any food prepared in a residential kitchen or other nonapproved facility, and the types of food served are limited to those specified in subsection (4) of this section.

(2) The person requesting a permit exemption under subsection (1) of this section shall submit a written application for an exemption on a form provided by the regulatory authority at least 14 calendar days before providing food service, or as otherwise required by the regulatory authority.

(3) The person requesting a permit exemption under subsection (1) of this section shall submit properly prepared plans and specifications of the food service facilities and equipment if the regulatory authority requires it, based on a review of the application for an exemption submitted under subsection (2) of this section.

(4) The person requesting a permit exemption under subsection (1) of this section shall limit food handling to one or more of the following foods:

(a) Popcorn and flavored popcorn prepared from commercially packaged ingredients that are not potentially hazardous food;

(b) Cotton candy;

(c) Dried herbs and spices processed in an approved facility;

(d) Crushed ice drinks containing only ingredients that are not potentially hazardous foods and dispensed from a self-contained machine that makes its own ice. Drinks with potentially hazardous food, snow cones, and shaved ice are not included;

(e) Corn on the cob prepared for immediate service;

(f) Whole peppers roasted for immediate service;

(g) Roasted nuts, roasted peanuts, and roasted candy-coated nuts;

(h) Chocolate-dipped ice cream bars prepared from pre-packaged ice cream bars produced in a food processing plant;

(i) Chocolate-dipped bananas prepared from bananas peeled and frozen in an approved facility; and

(j) Individual samples of sliced fruits and vegetables that are not potentially hazardous foods.

NEW SECTION

**WAC 246-215-08310 Application procedure—Submission thirty calendar days before proposed opening (2009 FDA Food Code 8-302.11).** An applicant shall submit an application for a permit at least thirty calendar days before the date planned for opening a food establishment or the expiration of the current permit for an existing facility.

NEW SECTION

**WAC 246-215-08315 Application procedure—Form of submission (2009 FDA Food Code 8-302.12).** A person desiring to operate a food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

NEW SECTION

**WAC 246-215-08320 Application procedure—Qualifications and responsibilities of applicants (2009 FDA Food Code 8-302.13).** To qualify for a permit, an applicant shall:

- (1) Be an owner of the food establishment or an officer of the legal ownership;
- (2) Comply with the requirements of this chapter;
- (3) As specified under WAC 246-215-08415, agree to allow access to the food establishment and to provide required information; and
- (4) Pay the applicable permit fees at the time the application is submitted.

NEW SECTION

**WAC 246-215-08325 Application procedure—Contents of the application (2009 FDA Food Code 8-302.14).** The application must include:

- (1) The name, birth date, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
- (2) Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) A statement specifying whether the food establishment:
  - (a) Is mobile or stationary and temporary or permanent; and
  - (b) Is an operation that includes one or more of the following:
    - (i) Prepares, offers for sale, or serves potentially hazardous food:
      - (A) Only to order upon a consumer's request;
      - (B) In advance quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or
      - (C) Using time as a public health control under WAC 246-215-03530;

(ii) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous food ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

(iii) Prepares food as specified under (b)(ii) of this subsection for delivery to and consumption at a location off the premises of the food establishment where it is prepared;

(iv) Prepares food as specified under (b)(ii) of this subsection for service to a highly susceptible population;

(v) Prepares only food that is not potentially hazardous food; or

(vi) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous food.

(4) The name, title, address, and telephone number of the person directly responsible for the food establishment;

(5) The name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under subsection (4) of this section such as the zone, district, or regional supervisor;

(6) The names, titles, and addresses of:

(a) The persons comprising the legal ownership as specified under subsection (2) of this section including the owners and officers; and

(b) The local resident agent if one is required based on the type of legal ownership.

(7) A statement signed by the applicant that:

(a) Attests to the accuracy of the information provided in the application; and

(b) Affirms that the applicant will:

(i) Comply with this chapter; and

(ii) Allow the regulatory authority access to the establishment as specified under WAC 246-215-08415 and to the records specified under WAC 246-215-03290, 246-215-05280 and 246-215-08215 (4)(f); and

(8) Other information required by the regulatory authority.

NEW SECTION

**WAC 246-215-08330 Issuance—New, converted, or remodeled establishments (2009 FDA Food Code 8-303.10).** For food establishments that are required to submit plans as specified under WAC 246-215-08200 the regulatory authority shall issue a permit to the applicant after:

(1) A properly completed application is submitted;

(2) The required fee is submitted;

(3) The required plans, specifications, and information are reviewed and approved; and

(4) A preoperational inspection as specified under WAC 246-215-08225 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this chapter.

NEW SECTION

**WAC 246-215-08335 Issuance—Existing establishments, permit renewal, and change of ownership (2009 FDA Food Code 8-303.20).** The regulatory authority may renew a permit for an existing food establishment or may

issue a permit to a new owner of an existing establishment after a properly completed application is submitted, reviewed and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this chapter.

#### NEW SECTION

**WAC 246-215-08340 Issuance—Denial of application for permit, notice (2009 FDA Food Code 8-303.30).** If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

- (1) The specific reasons and chapter citations for the permit denial;
- (2) The actions, if any, that the applicant must take to qualify for a permit; and
- (3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

#### NEW SECTION

**WAC 246-215-08345 Conditions of retention—Responsibilities of the regulatory authority (2009 FDA Food Code 8-304.10).** (1) At the time a permit is first issued, the regulatory authority shall provide to the permit holder a copy of this chapter so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under WAC 246-215-08350, that are applicable to the permit.

(2) Failure to provide the information specified in subsection (1) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with this chapter or an order, warning, or directive of the regulatory authority.

#### NEW SECTION

**WAC 246-215-08350 Conditions of retention—Responsibilities of the permit holder (2009 FDA Food Code 8-304.11).** Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

- (1) Post the permit in a location in the food establishment that is conspicuous to consumers;
- (2) Comply with the provisions of this chapter including the conditions of a granted variance as specified under WAC 246-215-08120, and approved plans as specified under WAC 246-215-08205;
- (3) If a food establishment is required under WAC 246-215-08210 to operate under a HACCP plan, comply with the plan as specified under WAC 246-215-08120;
- (4) Immediately contact the regulatory authority to report an illness of a food employee or conditional employee as specified under WAC 246-215-02215;
- (5) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard might exist as specified under WAC 246-215-08455;
- (6) Allow representatives of the regulatory authority access to the food establishment as specified under WAC 246-215-08415;

(7) Replace existing facilities and equipment specified under WAC 246-215-08100 with facilities and equipment that comply with this chapter if:

(a) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the requirements upon which the facilities and equipment were accepted; or

(b) The facilities and equipment are replaced in the normal course of operation.

(8) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;

(9) Accept notices issued and served by the regulatory authority according to law; and

(10) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

#### NEW SECTION

**WAC 246-215-08355 Conditions of retention—Permits not transferable (2009 FDA Food Code 8-304.20).** A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under WAC 246-215-08325(3) and the change in operation is not approved.

### **Subpart D - Inspection and Correction of Violations**

#### NEW SECTION

**WAC 246-215-08400 Frequency—Establishing inspection interval (2009 FDA Food Code 8-401.10).** (1) Except as specified in subsections (2) and (3) of this section, the regulatory authority shall inspect a food establishment at least once every six months.

(2) The regulatory authority may increase the interval between inspections beyond six months if:

(a) The food establishment is fully operating under an approved and validated HACCP plan as specified under WAC 246-215-08215 and 246-215-08120 (1) and (2);

(b) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule developed by the regulatory authority, or set by state or federal law, and uniformly applied throughout the jurisdiction; or

(c) The establishment's operation involves only coffee service and other food that is not packaged or prepackaged food that is not potentially hazardous food such as carbonated beverages and snack food such as chips, nuts, popcorn and pretzels.

(3) The regulatory authority shall inspect a temporary food establishment during its permit period, unless the regulatory authority develops a written risk-based plan for exempting certain categories of temporary food establishments from inspection that is uniformly applied throughout the jurisdiction.

#### NEW SECTION

**WAC 246-215-08405 Frequency—Performance- and risk-based (2009 FDA Food Code 8-401.20).** Within the parameters specified under WAC 246-215-08400, the regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

- (1) Past performance, for nonconformance with this chapter or HACCP plan requirements;
- (2) Past performance, for numerous repeat violations of this chapter or HACCP plan requirements;
- (3) Past performance, for complaints investigated and found to be valid;
- (4) The hazards associated with the particular foods that are prepared, stored or served;
- (5) The type of operation including the methods and extent of food storage, preparation, and service;
- (6) The number of people served;
- (7) Whether the population served is a highly susceptible population; and
- (8) Whether the establishment is properly implementing an approved self-inspection program.

#### NEW SECTION

**WAC 246-215-08410 Frequency—Competency of inspectors (2009 FDA Food Code 8-402.10).** An authorized representative of the regulatory authority who inspects a food establishment or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

#### NEW SECTION

**WAC 246-215-08415 Access—Allowed at reasonable times after due notice (2009 FDA Food Code 8-402.11).** After the regulatory authority presents official credentials and provides notice of the purpose of, and intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

#### NEW SECTION

**WAC 246-215-08420 Access—Refusal, notification of right to access, and final request for access (2009 FDA**

**Food Code 8-402.20).** If a person denies access to the regulatory authority, the regulatory authority shall:

(1) Inform the person that:

(a) The permit holder is required to allow access to the regulatory authority as specified under WAC 246-215-08415 of this chapter; and

(b) Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under WAC 246-215-08350(6).

(2) Make a final request for access.

#### NEW SECTION

**WAC 246-215-08425 Access—Refusal, reporting (2009 FDA Food Code 8-402.30).** If after the regulatory authority presents credentials and provides notice as specified under WAC 246-215-08415, explains the authority upon which access is requested, and makes a final request for access as specified under WAC 246-215-08420, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

#### NEW SECTION

**WAC 246-215-08430 Report of findings—Documenting information and observations (2009 FDA Food Code 8-403.10).** The regulatory authority shall document on an inspection report form approved by the department of health:

(1) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under WAC 246-215-08325(3), inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

(2) Specific factual observations of violative conditions or other deviations from this chapter that require correction by the permit holder including:

(a) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under WAC 246-215-02105;

(b) Failure of food employees, conditional employees, and the person in charge to demonstrate knowledge of their responsibility to report a disease or medical condition;

(c) Nonconformance with this chapter;

(d) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under WAC 246-215-08120;

(e) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under WAC 246-215-08215 (4)(f); and

(f) Nonconformance with critical limits of a HACCP plan.

NEW SECTION

**WAC 246-215-08435 Report of findings—Specifying time frame for corrections (2009 FDA Food Code 8-403.20).** The regulatory authority shall specify on the inspection report form the time frame for correction of any violations.

NEW SECTION

**WAC 246-215-08440 Report of findings—Issuing report and obtaining acknowledgment of receipt (2009 FDA Food Code 8-403.30).** At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

NEW SECTION

**WAC 246-215-08445 Report of findings—Refusal to sign acknowledgment (2009 FDA Food Code 8-403.40).** The regulatory authority shall:

(1) Inform the person who declines to sign an acknowledgment of receipt of inspectional findings as specified under WAC 246-215-08440 that:

(a) An acknowledgment of receipt is not an agreement with the findings;

(b) Refusal to sign an acknowledgment of receipt does not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified; and

(c) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(2) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

NEW SECTION

**WAC 246-215-08450 Report of findings—Public information (2009 FDA Food Code 8-403.50).** Except as specified under WAC 246-215-08220, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

NEW SECTION

**WAC 246-215-08455 Imminent health hazard—Ceasing operations and reporting (2009 FDA Food Code 8-404.11).** (1) Except as specified in subsection (2) of this section, a permit holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard might exist.

(2) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

NEW SECTION

**WAC 246-215-08460 Imminent health hazard—Resumption of operations (2009 FDA Food Code 8-404.12).** If operations are discontinued as specified under WAC 246-215-08455 or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

**Subpart E - Prevention of Foodborne Disease  
Transmission by Employees**

NEW SECTION

**WAC 246-215-08500 Investigation and control—Obtaining information—Personal history of illness, medical examination, and specimen analysis (2009 FDA Food Code 8-501.10).** The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; might be infected with a disease in a communicable form that is transmissible through food; might be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(1) Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.

NEW SECTION

**WAC 246-215-08505 Investigation and control—Restriction or exclusion of food employee, or summary suspension of permit (2009 FDA Food Code 8-501.20).** Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

(1) Restricting the food employee or conditional employee;

(2) Excluding the food employee or conditional employee; or

(3) Closing the food establishment by summarily suspending a permit to operate in accordance with law.

NEW SECTION

**WAC 246-215-08510 Investigation and control—Restriction or exclusion order: Warning or hearing not required, information required in order (2009 FDA Food Code 8-501.30).** Based on the findings of the investigation as specified under WAC 246-215-08500 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the

permit holder without prior warning, notice of a hearing, or a hearing if the order:

- (1) States the reasons for the restriction or exclusion that is ordered;
- (2) States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusions are eliminated;
- (3) States that the suspected food employee or permit holder may request an appeal hearing by submitting a timely request as provided in law; and
- (4) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing can be made.

#### NEW SECTION

**WAC 246-215-08515 Investigation and control—Removal of exclusion or restriction (2009 FDA Food Code 8-501.40).** The regulatory authority or person in charge shall release a food employee or conditional employee from restriction or exclusion according to law and the conditions specified under WAC 246-215-02245, 246-215-02250, and 246-215-02255.

#### NEW SECTION

**WAC 246-215-08520 Investigation and control—Procedure when disease transmission is suspected.** (1) When a possible foodborne illness incident is reported to any food employee, the person in charge of the food establishment shall:

- (a) Immediately report the incident to the regulatory authority; and
  - (b) Remove from sale and refrigerate any suspect foods until released by the regulatory authority.
- (2) When the regulatory authority suspects that a food establishment, or its employees, might be the source of a foodborne illness, the regulatory authority shall take appropriate action to control the transmission of disease. This action may include any or all of the following:
- (a) Secure records that might enable identification of persons potentially exposed to the disease, or require additional assistance in locating such persons;
  - (b) Secure the illness history of each suspected employee;
  - (c) Exclude any suspected employee(s) from working in the food establishment until, in the opinion of the regulatory authority, there is no further risk of disease transmission;
  - (d) Suspend the permit of the food establishment until, in the opinion of the regulatory authority, there is no further risk of disease transmission;
  - (e) Restrict the work activities of any suspected employee;
  - (f) Require medical and laboratory examinations of any food employee and of his/her body discharges;
  - (g) Obtain any suspect food for laboratory examination;
  - (h) Require the destruction of, or placement of a hold order on, all suspected food; and
  - (i) Limit, substitute, or restrict menu items or food handling practices that might be associated with causing illness.

(3) The provisions of chapter 246-100 WAC, Communicable and Certain Other Diseases, apply.

### **Subpart F - Enforcement**

#### NEW SECTION

**WAC 246-215-08600 Permits required, suspension, revocation, enforcement.** (1) Any person operating a food establishment without a valid permit issued by the regulatory authority may be guilty of a misdemeanor under RCW 70.05.120 and local regulations.

(2) The regulatory authority may suspend any permit to operate a food establishment if:

- (a) Continued operation of the food establishment constitutes an imminent or actual health hazard;
- (b) Operations, facilities, or equipment in the food establishment fail to comply with these regulations;
- (c) The permit holder does not comply with these regulations; or
- (d) Interference with the regulatory authority in the performance of its duties has occurred.

(3) When the regulatory authority has suspended a food establishment permit, the permit holder or person in charge:

- (a) Shall be notified in writing by the regulatory authority that the food establishment permit is immediately suspended upon service of the notice;
- (b) Shall immediately cease all food service operations until a hearing with the regulatory authority finds the operation to be in compliance with the requirements and regulations;

(c) May request a hearing by filing a written request for a hearing with the regulatory authority within ten days of receipt of the notice of suspension; and

(d) Shall be notified, if a written request for a hearing is not filed within ten days, that the suspension is sustained.

(4) Any person whose food establishment permit has been suspended may at any time make written application for a reinspection for the purpose of reinstatement of the permit. The application must include a signed statement explaining how the conditions causing the suspension of the permit have been corrected.

(5) Within two working days following receipt of a written request for reinspection, the regulatory authority shall make a reinspection, and reinstate the permit if the person is in compliance with these regulations.

(6) The regulatory authority may adopt and use a permit suspension process different than specified under subsection (2), (3), (4), or (5) of this section.

(7) The regulatory authority may revoke a food establishment permit after providing the permit holder an opportunity for hearing if:

- (a) Serious and repeated violation(s) of any requirements of these regulations have occurred; or
- (b) Repeated interference with, or assault upon a representative of the regulatory authority in the performance of his/her duty, has occurred.

(8) Before revocation, the regulatory authority shall notify, in writing, the permit holder of the specific reason(s) why the permit is to be revoked. The notice must state:

(a) That the permit will be revoked at the end of the ten days following the notice unless a written request for a hearing is filed with the regulatory authority by the permit holder within such ten-day period; and

(b) If a request for a hearing is not filed by the permit holder within the ten-day period, the revocation of the permit becomes final.

(9) Any person whose food establishment permit has been revoked by the regulatory authority, after a period of six months, may:

(a) Make written application for a new permit; and

(b) Request a hearing with the regulatory authority to determine whether a new permit will be issued.

(10) The regulatory authority may use a permit revocation process different than specified under subsections (7), (8), and (9) of this section.

(11) The regulatory authority may initiate any one, or a combination of, compliance methods that include, but are not limited to:

(a) Holding an administrative conference with the food establishment permit holder or person in charge;

(b) Placing the food establishment on probation;

(c) Setting conditions for continued operation of the food establishment, by the permit holder, during the probation period;

(d) Requiring additional education or training of employees, management, and owners of the food establishment; and

(e) Completing a hazard evaluation and requiring monitoring procedures be implemented for critical control points identified.

#### NEW SECTION

**WAC 246-215-08605 Service of notice.** (1) A notice provided for in these regulations is properly served when it is:

(a) Delivered to the permit holder;

(b) Delivered to the person in charge of the food establishment; or

(c) Sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(2) A copy of the notice must be filed in the records of the regulatory authority.

#### NEW SECTION

**WAC 246-215-08610 Hearings.** (1) The hearings provided for in Part 8 must be:

(a) Conducted by the regulatory authority or its designee, and

(b) Conducted at a time and place designated by the regulatory authority.

(2) The regulatory authority or designee shall:

(a) Make a final finding based upon the complete hearing record;

(b) Sustain, modify, or rescind any notice or order considered in the hearing; and

(c) Furnish a written report of the hearing decision to the permit holder.

(3) The regulatory authority may adopt and use an alternate hearing process.

## PART 9: ALTERNATIVE FOOD FACILITIES

### Subpart A - Mobile Food Units

#### NEW SECTION

**WAC 246-215-09100 Requirements and restrictions—Requirements.** (1) The permit holder and person in charge of a mobile food unit shall comply with the requirements of this chapter, except as otherwise provided in this section.

(2) The permit holder shall obtain approval from other applicable regulating agencies prior to operating a mobile food unit, including the Washington state department of labor and industries.

(3) The person in charge of a mobile food unit shall operate the mobile food unit from an approved commissary or servicing area and shall return to such location for supplies, thorough cleaning, and other servicing activities, as approved in a plan of operation. When not in operation, a mobile food unit must be stored at an approved servicing area or other approved location.

#### NEW SECTION

**WAC 246-215-09105 Requirements and restrictions—Restrictions.** The regulatory authority may impose additional requirements to protect against health hazards related to the operation of a mobile food unit and may:

(1) Limit the food preparation steps;

(2) Prohibit some menu items; and

(3) Restrict the mode of operation when facilities or equipment are inadequate to protect public health.

#### NEW SECTION

**WAC 246-215-09110 Plan approval—Plan review.** The owner of a mobile food unit shall submit a properly prepared plan of operation with specifications of the mobile food unit, commissary, and servicing area to the regulatory authority for approval before:

(1) Construction or remodeling begins;

(2) The menu of the mobile food unit is changed;

(3) The method of food preparation is changed;

(4) The vehicle is changed; or

(5) The commissary is changed.

#### NEW SECTION

**WAC 246-215-09115 Plan approval—Plan contents.** The owner of a mobile food unit shall include in the plan required by WAC 246-215-09110:

(1) Menu and food preparation steps;

(2) Floor plan;

(3) Equipment specifications and location;

(4) Finish schedule;

(5) Proposed itinerary or sites to be served;

(6) Source of water and specifications of the on-board plumbing;

(7) Site used for sewage disposal;

(8) Availability of restrooms for employees;

- (9) Operating procedures; and
- (10) Cleaning schedule.

NEW SECTION

**WAC 246-215-09120 Additional requirements—Standard operating procedures.** The person in charge of a mobile food unit shall ensure:

- (1) Only employees and other persons authorized by the regulatory authority are present in the mobile food unit;
- (2) All employees are in compliance with the provisions of chapter 69.06 RCW and chapter 246-217 WAC for obtaining and renewing valid food worker cards, unless all foods are prepackaged and are not potentially hazardous food;
- (3) All foods, including ice, are from an approved source or commissary;
- (4) Potentially hazardous foods prepared on the mobile food unit are served the same day they are prepared;
- (5) Prepackaged foods are properly labeled;
- (6) Only single-service articles are provided for use by the customer; and
- (7) Condiments not in individual packages are provided in dispenser bottles or in other containers protected from contamination.

NEW SECTION

**WAC 246-215-09125 Potentially hazardous foods—Temperature control.** The person in charge of a mobile food unit shall ensure that potentially hazardous foods are:

- (1) Not cooled on the mobile food unit;
- (2) Properly temperature-controlled during transport to the place of service;
- (3) Temperature-monitored by use of a stem-type thermometer or thermocouple capable of measuring all proper food temperatures;
- (4) Reheated, for hot holding, from 41°F (5°C) to 165°F (74°C) or above within one hour on the mobile food unit when the foods were cooked and cooled in an approved non-mobile food establishment;
- (5) Reheated, for hot holding, from 41°F (5°C) to 135°F (74°C) or above within one hour on the mobile food unit when the foods were produced in a food processing plant;
- (6) Reheated no more than one time; and
- (7) Held in preheated mechanical hot holding equipment or prechilled mechanical cold holding equipment, or otherwise temperature controlled by an approved method.

NEW SECTION

**WAC 246-215-09130 Cooking thickness—Cooking raw meats.** The person in charge shall ensure that raw meats greater than one inch in thickness are not cooked on the mobile food unit, unless otherwise approved.

NEW SECTION

**WAC 246-215-09135 Water and wastewater—Water system.** The person in charge shall ensure that the water system on the mobile food unit:

- (1) Is supplied from an approved source of water;
- (2) Is designed and constructed in an approved manner;
- (3) Is filled from the approved water source through a food-grade hose;
- (4) Is refilled as frequently as necessary to furnish enough hot and cold water for handwashing, food preparation, utensil cleaning, sanitizing, and facility cleaning, on the mobile food unit;
- (5) Has a water supply tank with a minimum capacity of five gallons for handwashing;
- (6) Stores liquid waste in a wastewater retention tank with at least fifteen percent more capacity than the water supply tank; and
- (7) Retains wastewater on the mobile food unit until disposed of by an approved method.

NEW SECTION

**WAC 246-215-09140 Handwashing—Handwashing facilities.** The person in charge of a mobile food unit shall ensure that a separate handwashing sink for employees is accessible at all times of operation; allows convenient use by employees; is located within 25 feet of food preparation, food dispensing, and warewashing areas; is installed as specified under WAC 246-215-05210; and includes soap and paper towels.

NEW SECTION

**WAC 246-215-09145 Handwashing—Handwashing waiver.** When only prepackaged food items are served, the regulatory authority may waive or modify requirements for handwashing on the mobile food unit.

NEW SECTION

**WAC 246-215-09150 Employee restrooms—Toilet facilities.** The permit holder shall ensure approved toilet facilities are available for employees:

- (1) Readily accessible within 200 feet of the mobile food unit during times of operation, if at any one location for more than one hour; and
- (2) Provided with handwashing facilities that meet the requirements specified under WAC 246-215-05210.

NEW SECTION

**WAC 246-215-09155 Sink compartment requirements—Warewashing facilities.** The permit holder shall ensure:

- (1) A three-compartment sink is available on the mobile food unit with potable hot and cold running water to wash, rinse, and sanitize utensils when utensils are reused on the mobile food unit; except
- (2) This requirement may be waived or modified by the regulatory authority when:
  - (a) Limited food preparation occurs; or
  - (b) Additional clean utensils are available and utensil washing takes place at an approved commissary or servicing area.

NEW SECTION

**WAC 246-215-09160 Required postings—Business name.** The permit holder shall provide the regulatory authority a designated business name and ensure that name is posted on the mobile food unit in a manner easily visible to customers during operation.

NEW SECTION

**WAC 246-215-09165 Required postings—Permit.** The permit holder shall ensure the original or a copy of the currently valid food establishment permit is posted on the mobile food unit in a manner easily visible to customers during operation.

NEW SECTION

**WAC 246-215-09170 Food and equipment protection—Overhead protection.** The permit holder and person in charge shall ensure overhead protection is provided at the site of operation of the mobile food unit for all food handling activities.

NEW SECTION

**WAC 246-215-09175 Food and equipment protection—Food and food service supplies.** The permit holder and person in charge shall ensure that all food, equipment, utensils, and other food service supplies are contained on the mobile food unit, at the approved commissary, at the approved servicing area, or as otherwise approved in the plan of operation.

NEW SECTION

**WAC 246-215-09180 Movable buildings—Lack of permanent plumbing.** The regulatory authority may allow a person to operate a food establishment with a limited menu in a movable building without permanent plumbing under applicable provisions of this subpart.

### Subpart B - Temporary Food Establishments

NEW SECTION

**WAC 246-215-09200 Requirements and restrictions.** (1) The permit holder and person in charge of a temporary food establishment shall comply with the requirements of this chapter, except as otherwise provided in this subpart.

(2) The regulatory authority may impose additional requirements to protect against health hazards related to the operation of the temporary food establishment and may:

- (a) Limit the food preparation steps;
- (b) Prohibit some menu items; and
- (c) Restrict the mode of operation when facilities or equipment are inadequate to protect public health.

(3) The owner of a temporary food establishment shall:

- (a) Apply to the regulatory authority for a permit to operate the temporary food establishment at least fourteen calendar days before intending to provide food service, or as otherwise required by the regulatory authority;

(b) Allow only employees and other persons authorized by the regulatory authority to be present in the temporary food establishment; and

(c) Require the person in charge of the temporary food establishment to obtain a valid food worker card before beginning work.

NEW SECTION

**WAC 246-215-09205 Food and equipment protection—Standard operating procedures.** The person in charge of a temporary food establishment shall ensure:

(1) Adequate facilities are provided at the temporary food establishments for all necessary food preparation steps;

(2) All foods, including ice, are from an approved source;

(3) All off-site food preparation is done in an approved food establishment;

(4) All storage of food and equipment is done at approved locations;

(5) Food is transported and stored in properly designed food-grade containers;

(6) Food is protected from potential contamination during transport;

(7) Only single-service articles are provided for use by consumers, unless otherwise approved by the regulatory authority; and

(8) Condiments not in individual packages are provided in dispenser bottles or in other containers protected from contamination.

NEW SECTION

**WAC 246-215-09210 Potentially hazardous food—Temperature control.** The person in charge of a temporary food establishment shall ensure that potentially hazardous foods are:

(1) Not cooled in a temporary food establishment;

(2) Properly temperature-controlled during transport to the temporary event location;

(3) Temperature-monitored by use of a stem-type thermometer or thermocouple capable of measuring all proper food temperatures;

(4) Reheated, for hot holding, from 41°F (5°C) to 165°F (74°C) or above within one hour when cooked and cooled in an approved food establishment;

(5) Reheated, for hot holding, from 41°F (5°C) to 135°F (60°C) or above within one hour when produced in a food processing plant;

(6) Reheated no more than one time; and

(7) Held in preheated mechanical hot holding equipment or prechilled mechanical cold holding equipment, or otherwise temperature controlled by an approved method.

NEW SECTION

**WAC 246-215-09215 Thawing thickness—Thawing potentially hazardous foods.** The person in charge of a temporary food establishment shall ensure potentially hazardous

foods that are thawed as part of a continuous cooking process are not greater than four inches thick.

#### NEW SECTION

**WAC 246-215-09220 Public access—Separation barrier.** The person in charge of a temporary food establishment shall ensure a separation barrier or other effective method is used to protect food preparation area and cooking areas from public access.

#### NEW SECTION

**WAC 246-215-09225 Handwashing and wastewater—Facilities.** The permit holder of a temporary food establishment shall ensure approved handwashing facilities allow convenient use by employees; are located within 25 feet of food preparation, food dispensing, and warewashing areas; and include:

- (1) Potable, warm, running water;
- (2) Soap and paper towels;
- (3) A five-gallon or larger insulated container kept supplied with warm water for handwashing delivered through a continuous-flow spigot, if permanent plumbing is not available; and
- (4) A wastewater retention tank sufficient in size to hold all wastewater generated by the temporary food establishment until emptied in an approved manner, if a public sewage system hookup is not available.

#### NEW SECTION

**WAC 246-215-09230 Employee restrooms—Toilet facilities.** The permit holder of a temporary food establishment shall ensure approved toilet facilities are available for employees and are:

- (1) Readily accessible during all times of operation; and
- (2) Provided with handwashing facilities with potable, warm, running water.

#### NEW SECTION

**WAC 246-215-09235 Sink compartment requirements—Warewashing facilities.** The permit holder of a temporary food establishment shall ensure access within 200 feet to a three-compartment sink with approved drain boards and an adequate supply of hot and cold running water to wash, rinse, and sanitize utensils when:

- (1) Equipment or utensils are reused on-site; or
- (2) The temporary food establishment operates for two or more consecutive days; except
- (3) The regulatory authority may approve an alternative utensil cleaning method when three-compartment sinks with drain boards are not available and a health hazard cannot result.

#### NEW SECTION

**WAC 246-215-09240 Sink compartment requirements—Food preparation sink.** The permit holder and person in charge shall ensure a separate food preparation sink is

available at the temporary food establishment that is supplied with potable running water, drained to an approved wastewater system through an indirect connection, if produce needs to be washed on-site. Alternative produce washing facilities may be used if approved.

### **Subpart C - Bed and Breakfast Operations**

#### NEW SECTION

**WAC 246-215-09300 Residential kitchen—Requirements and restrictions.** (1) The permit holder and person in charge of a bed and breakfast operation shall comply with the requirements of this chapter, except as otherwise provided in this subpart.

(2) The regulatory authority may impose additional requirements to protect against health hazards related to the food service portion of a bed and breakfast operation.

(3) Food may be handled in the residential kitchen of a bed and breakfast operation without meeting the provisions of WAC 246-215-02315, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04236, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04315, 246-215-04340, 246-215-04345, 246-215-04405, 246-215-04410, 246-215-04500(1), 246-215-04510, 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04575, 246-215-04610, 246-215-04710, 246-215-04940, and 246-215-05240, Part 4, Subpart H; Part 5, Subpart E; Part 6 and Part 7, if:

- (a) The number of guest bedrooms does not exceed eight;
  - (b) Food service is limited to overnight guests;
  - (c) Breakfast is the only meal prepared; however, baked goods that are not potentially hazardous food may be prepared and served at any time of day;
  - (d) Potentially hazardous foods are prepared for immediate service only; and
  - (e) Potentially hazardous foods are not cooled for later reheating.
- (4) If food service is provided in a bed and breakfast operation other than under the conditions of subsection (3) of this section, all foods must be prepared in an approved non-residential kitchen meeting the requirements of this chapter.

#### NEW SECTION

**WAC 246-215-09305 Food protection—Standard operating procedures.** The person in charge of a bed and breakfast operation shall ensure:

- (1) Food supplies for personal use are separated from food supplies intended for guest use;
- (2) Food-contact surfaces are thoroughly cleaned before each use;
- (3) A handwashing sink is available for use by employees during all times food is prepared for bed and breakfast operation guests and is located within 25 feet of food preparation, food dispensing, and warewashing areas;
- (4) Each handwashing sink is provided with a supply of hand soap and single-use towels or other approved hand-dryer device;

(5) Refuse, recyclables, and returnables are stored in a manner that does not create a public health hazard or nuisance;

(6) The premises are maintained to control insects, rodents, and other pests;

(7) Children under age ten and animals are kept out of food preparation areas during all times food is prepared for bed and breakfast guests; and

(8) Toxic chemicals are stored in accurately labeled containers away from all foods and food service supplies.

#### NEW SECTION

**WAC 246-215-09310 Sinks—Sink compartment requirements.** The kitchen of a bed and breakfast operation must have at least the following facilities for cleaning and sanitizing food contact utensils and equipment and to allow handwashing in a separate sink basin from one used for food preparation:

(1) A three-compartment sink; or

(2) Two-sink basins plus a home-style dishwasher with a sanitizing cycle providing 155°F (68°C) or hotter water.

#### **Subpart D - Donated Food Distributing Organizations**

#### NEW SECTION

##### **WAC 246-215-09400 Requirements and exemptions.**

(1) The person in charge of a donated food distributing organization shall comply with the requirements of this chapter, except as otherwise provided in this section.

(2) A donated food distributing organization is exempt from the provisions of WAC 246-215-08600 and Part 8, Subpart C of this chapter, regarding operating with a valid food establishment permit.

(3) The person in charge of a donated food distributing organization shall notify the regulatory authority in writing or by another approved manner:

(a) Annually of the nature of its food service activities, including types of food served or distributed; and

(b) Whenever there is a significant change in its food service activities.

(4) A donated food distributing organization is exempt from meeting the provisions of WAC 246-215-02315, 246-215-03610, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04236, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04315, 246-215-04340, 246-215-04345, 246-215-04405, 246-215-04410, 246-215-04500(1), 246-215-04510, 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04575, 246-215-04610, 246-215-04710, 246-215-04940, and 246-215-05240, Part 4, Subpart H; Part 5, Subpart E; and Part 6, if:

(a) All foods are donated to needy persons under the provisions of chapter 69.80 RCW;

(b) Potentially hazardous food items prepared on-site or at a donor kitchen are served within eight hours of preparation; and

(c) Potentially hazardous food items are not cooled and reheated on-site.

#### NEW SECTION

**WAC 246-215-09405 Standard operating procedures—Food protection.** The person in charge of a donated food distributing organization shall ensure:

(1) Equipment for cold holding, heating, and hot holding foods are sufficient in number and capacity to provide food temperatures specified in Part 3 of this chapter;

(2) Food-contact surfaces are thoroughly cleaned before each use;

(3) A handwashing sink is accessible for use by employees during all times of food preparation and service of unwrapped foods and is located within 25 feet of food preparation, food dispensing, and warewashing areas;

(4) Each sink used for handwashing is provided with a supply of hand soap and single-use towels or other approved hand-drying device;

(5) Refuse, recyclables, and returnables are stored in a manner that does not create a public health hazard or nuisance;

(6) The premises are maintained to control insects, rodents, and other pests;

(7) Children under age ten and animals are kept out of food preparation areas during the preparation of foods; and

(8) Toxic chemicals are stored in accurately labeled containers away from all foods and food service supplies.

#### NEW SECTION

**WAC 246-215-09410 Sinks—Sink compartment requirements.** The person in charge of a donated food distributing organization shall have at least the following facilities available for handwashing and cleaning of food-contact utensils and equipment:

(1) A three-compartment sink;

(2) Two-sink basins plus a home-style dishwasher with a sanitizing cycle providing 155°F (68°C) or hotter water; or

(3) As otherwise approved.

#### NEW SECTION

**WAC 246-215-09415 Food sources—Donated foods.** The person in charge of a donated food distributing organization may receive foods for charitable purposes that include:

(1) Surplus foods from a food establishment;

(2) Muscle meat of a wild game animal:

(a) Received from a law enforcement officer certified by a jurisdiction in the state of Washington or from a hunter licensed by the department of fish and wildlife;

(b) Processed by an approved meat cutter; and

(c) Labeled "*Uninspected wild game meat, thoroughly cook to 165 °F (74 °C) internal temperature*";

(3) Muscle meat of a domesticated livestock animal, poultry, or rabbit;

(a) Donated live to the distributing organization;

(b) Raised by a member of an approved youth club, such as 4H;

(c) Processed by an approved meat cutter; and

(d) Labeled "*Uninspected wild game meat, thoroughly cook to 165 °F (74 °C) internal temperature*";

(4) Foods properly handled, stored, or prepared in a donor kitchen;

(5) Food handled, stored, or prepared in a residential kitchen in a private home and is not potentially hazardous food or ready-to-eat food.

(6) Nonpotentially hazardous baked goods handled, stored, or prepared in a residential kitchen in a private home;

(7) Nonpotentially hazardous, ready-to-eat foods in an intact commercial package stored in a residential kitchen in a private home; and

(8) Commercially packaged frozen food.

#### NEW SECTION

**WAC 246-215-09420 Receiving food—Food condition.** The person in charge of a donated food distributing organization shall ensure that foods are inspected upon receipt and information is obtained from donors in order to determine that:

(1) Foods are safe and not adulterated;

(2) Surplus foods have not been previously served to a person;

(3) Potentially hazardous food meets the temperature specifications in WAC 246-215-03235;

(4) Foods have been protected from contamination during handling and storage by intact original commercial packaging or sanitary food-grade containers; and

(5) Foods have been handled and transported in separate containers as needed to prevent potential cross contamination between ready-to-eat and nonready-to-eat foods.

#### NEW SECTION

**WAC 246-215-09425 Prohibited food—Restrictions.** The person in charge of a donated food distributing organization may not serve or distribute:

(1) Home-canned foods;

(2) Canned foods in containers that are rusty or severely damaged;

(3) Distressed foods (such as from a fire, flood, or prolonged storage) unless the foods have been evaluated and approved for charitable distribution; or

(4) Infant formula that is past the original expiration date set by the processor.

#### NEW SECTION

**WAC 246-215-09430 Food labels—Alternative labeling.** The person in charge of a donated food distributing organization may distribute packaged foods without complete label information on each individual container, provided that:

(1) Each container is labeled with the common name of the food; and

(2) The label information, according to the provisions of chapter 69.04 RCW, is on the master carton or is posted in plain view on a card, sign, or other method of notice at the point of distribution to the consumer.

#### NEW SECTION

**WAC 246-215-09435 Record keeping—Receiving record.** The person in charge of a donated food distributing organization receiving potentially hazardous foods or nonpotentially hazardous, ready-to-eat foods not prepackaged in a food processing plant shall keep records for 30 days documenting the source, quantity, type, and receiving date of the foods.

### **Subpart E - Preschools**

#### NEW SECTION

#### **WAC 246-215-09500 Requirements and exemptions.**

(1) The permit holder and person in charge of a preschool shall comply with the requirements of this chapter, except as otherwise provided in this section. If the permit holder does not meet the requirements under subsection (2) of this section, the permit holder shall comply with all requirements of this chapter.

(2) A preschool is exempt from meeting the provisions of WAC 246-215-02315, 246-215-03610, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04410, 246-215-04500(1), 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04610(2), 246-215-04710, 246-215-05240, 246-215-06100, 246-215-06200, 246-215-06290, and 246-215-06355 if:

(a) Food service is limited to enrolled children, staff, and volunteers at the preschool;

(b) Potentially hazardous foods are prepared for immediate service; and

(c) Cooked, reheated, or hot held potentially hazardous foods are not cooled for future service. They must be either served hot or discarded each day.

(3) The regulatory authority may impose additional requirements to protect against health hazards related to the operation of the preschool and may:

(a) Limit the food preparation steps;

(b) Prohibit some menu items; and

(c) Restrict the mode of operations when the facilities or equipment are inadequate to protect public health.

#### NEW SECTION

**WAC 246-215-09505 Standard operating procedures.** The person in charge of the preschool shall ensure:

(1) Equipment for cold holding, heating and hot holding foods are sufficient in number and capacity to provide food temperatures specified in Part 3 of this chapter. Residential models of such equipment may be used if they are easily cleanable and in good repair;

(2) Food-contact surfaces are thoroughly cleaned and sanitized before each use;

(3) A handwashing sink is accessible for use by employees during all times of food preparation and service of unwrapped foods and is located within 25 feet of food preparation, food dispensing, and warewashing areas;

(4) Each handwashing sink is provided with a supply of hand soap and single-use towels or other approved hand-drying device;

(5) Refuse and recyclables are stored in a manner that does not create a public health hazard or nuisance;

(6) The premises must be maintained free of infestations of insects, rodents, and other pests such that there is not a breeding population of pests in the facility; and

(7) Toxic chemicals are stored in accurately labeled containers away from all foods and food service supplies.

#### NEW SECTION

**WAC 246-215-09510 Sink compartment requirements.** (1) At a minimum, a preschool must have manual warewashing sinks as specified under WAC 246-215-04305.

(2) One of the warewashing sinks may also be used as a handwashing sink, provided food preparation and warewashing occur at separate times.

#### NEW SECTION

**WAC 246-215-09515 Food preparation sink.** If produce is washed on-site, the preschool must either have:

(1) A separate food preparation sink as specified under WAC 246-215-04325; or

(2) A preapproved alternate produce washing procedure (e.g., the use of a colander) that ensures produce is not directly placed in warewashing or handwashing sinks.

### **PART 10: SEVERABILITY**

#### NEW SECTION

**WAC 246-215-10000 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-215-001	Purpose and authority.
WAC 246-215-005	Minimum performance standards.
WAC 246-215-011	Definitions.
WAC 246-215-021	Management and personnel.
WAC 246-215-031	Employee hygiene.
WAC 246-215-041	Food supplies.
WAC 246-215-051	Public health labeling.
WAC 246-215-061	Food handling.
WAC 246-215-071	Equipment and utensils.
WAC 246-215-081	Water, plumbing, and waste.

WAC 246-215-091	Physical facilities.
WAC 246-215-121	Mobile food units.
WAC 246-215-131	Temporary food establishments.
WAC 246-215-141	Bed and breakfast operations.
WAC 246-215-151	Donated food distributing organizations.
WAC 246-215-181	Compliance and enforcement.
WAC 246-215-191	Exempt from permit.
WAC 246-215-200	Permits required, suspension, revocation, enforcement.
WAC 246-215-210	Service of notices.
WAC 246-215-220	Hearings.
WAC 246-215-240	Examination, hold orders, condemnation, and destruction of food.
WAC 246-215-251	Employee health.
WAC 246-215-260	Procedure when disease transmission is suspected.
WAC 246-215-280	Interpretation.
WAC 246-215-290	Separability clause.
WAC 246-215-300	Penalty clause.
WAC 246-215-311	Effective date.

**WSR 12-17-161  
PROPOSED RULES  
DEPARTMENT OF REVENUE**

[Filed August 22, 2012, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-02-077.

Title of Rule and Other Identifying Information: WAC 458-20-155 Information and computer services, 458-20-15501 Taxation of computer systems and hardware, 458-20-15502 Taxation of computer software, and 458-20-15503 Digital products.

Hearing Location(s): Capital Plaza Building, 4th Floor Large Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on October 3, 2012, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: October 10, 2012.

Submit Written Comments to: Dylan Waits, Caleb Allen, P.O. Box 47453, Olympia, WA 98504-7453, e-mail DylanW@dor.wa.gov; CalebA@dor.wa.gov, by October 3, 2012.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-

7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 535, Laws of 2009 (ESHB 2075), made major changes to the taxation of certain products and services provided or furnished electronically (commonly referred to as "digital products"). This legislation specifically imposed sales and use tax on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software. The legislation also provided a number of sales and use tax exemptions.

Chapter 111, Laws of 2010 (SHB 2620), clarified ambiguities and corrected unintended consequences related to the 2009 legislation.

The department is proposing an amendment to Rule 15501, adoption of two new rules (Rules 15502 and 15503), and the repeal of one rule (Rule 155) to explain the impacts of the 2009 and 2010 legislation, and to address other tax issues related to computer hardware, computer software, and computer services.

Reasons Supporting Proposal: To provide current guidance on how digital products are taxed.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: Chapter 535, Laws of 2009, and chapter 111, Laws of 2010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Dylan Waits, Caleb Allen, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Russell W. Brubaker, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1505.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

August 22, 2012

Alan R. Lynn  
Rules Coordinator

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-155	Information and computer services.
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AMENDATORY SECTION (Amending WSR 09-01-088, filed 12/16/08, effective 1/16/09)

**WAC 458-20-15501 (~~Computer hardware, computer software, information service, and computer services~~) Taxation of computer systems and hardware.** ~~((+) Introduction.~~ This section explains the business and occupation (B&O), retail sales, and use tax treatment of activities related to computer hardware, computer software, information service, and computer services. Such activities include, but are not limited to, selling, leasing, manufacturing, installing, repairing, and maintaining computer hardware and software, as well as developing, duplicating, configuring, licensing, downloading, and accessing computer software.

This section contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

The information provided in this section is divided into five parts:

(a) Part I provides information on taxation of computer systems.

(b) Part II provides information on taxation of computer hardware.

(c) Part III provides information on taxation of computer software.

(d) Part IV provides information on taxation of information services and computer services.

(e) Part V provides reference to WAC 458-20-155 (~~Information and computer services~~) on the distinction between sales of products and sales of services.

### **PART I – TAXATION OF COMPUTER SYSTEM**

#### ~~(+1))~~ (1) **Taxation of computer systems.**

(a) **What is a computer?** A "computer" is an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. RCW 82.04.215. Examples of a computer include, but are not limited to, mainframe computer, laptop, workstation, and desktop computer. "Computer" also includes automatic data processing equipment, which is a computer used for data processing purposes. "Computer" does not include any computer software or peripheral devices.

(b) **Computer systems and computer networks distinguished.** A "computer system" is a functional unit, consisting of one computer and associated computer software, whereas a computer network is two or more computers and associated computer software that uses common storage. A computer system may or may not include peripheral devices.

(c) **Wholesale sale of computer systems.** Gross proceeds of sales of computer systems to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification. To verify the wholesale nature of the sale, the seller should obtain a (~~resale certificate~~) reseller permit from the buyer as provided by WAC 458-20-102 (~~((Resale certificates)))~~ (Reseller permits).

(d) **Retail sale of computer systems.** Gross proceeds of sales of computer systems to consumers are subject to B&O tax under the retailing classification. Persons making retail

sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law. If the seller is required to collect Washington sales tax (such as in the case of the seller having nexus with Washington), but does not collect Washington sales tax, the buyer is responsible for remitting retail sales tax (commonly referred to as deferred sales tax), unless the sale is specifically exempt by law. If the seller is not required to collect Washington sales tax, then the buyer is responsible for remitting use tax, unless the transaction is specifically exempt by law. Separately stated charges for custom software sold with the computer system are subject to service B&O tax. ~~((See subsection (302) of this section))~~

(e) **Manufacturing of computer systems.** Persons manufacturing computer systems are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of computer systems who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

(i) Separately stated charges for custom programming sold with the computer system are not subject to manufacturing B&O tax, but are subject to service B&O tax. ~~((See subsection (302) of this section.))~~

(ii) Separately stated charges for computer software sold and installed after the sale of a computer system are not subject to manufacturing B&O tax.

(iii) The combining of a computer system with certain peripheral devices is considered a packaging activity not subject to manufacturing B&O tax, when the following occurs:

(A) The peripheral devices remain in the original packaging;

(B) The person does not attach its own label to the peripheral devices;

(C) The person maintains a separate inventory of the peripheral devices for sale apart from the sale of the computer system; and

(D) The charge for the sale of peripheral devices is separately stated from the charge for the sale of computer systems.

~~((102))~~ **(2) Examples.**

(a) ABC Computers, Inc., an in-state manufacturer, manufactures and sells at retail computer systems. ABC sells a computer system to Steve for one flat charge. The computer system includes a disk drive, memory, CPU, keyboard, mouse, monitor, and bundled prewritten computer software. ABC is subject to retailing B&O tax and must collect retail sales tax on the sale to Steve. In addition, ABC is subject to manufacturing B&O tax on the value of the product sold (which is generally the sales price). ABC is entitled to claim a multiple activities tax credit.

(b) ADE Computers, Inc., manufactures and sells computer systems at retail to customers. ADE sells to Julie a computer system with certain peripheral devices at separate

charges. The computer system without the peripheral devices consists of a disk drive, memory, CPU, and bundled prewritten computer software. The peripheral devices include a keyboard, mouse, and monitor. All peripheral devices remain in the original packaging of the manufacturers. ADE does not attach its own label to the peripheral devices. Finally, ADE maintains a separate inventory of the peripheral devices for sale apart from the sale of ADE's computer systems. ADE is subject to retailing B&O tax and must collect retail sales tax from Julie on the sales of the computer system including the peripheral devices. ADE is subject to manufacturing B&O tax on the value of the computer system excluding the peripheral devices. ADE is entitled to claim a multiple activities tax credit. ADE is not subject to manufacturing B&O tax on the value of the peripheral devices, because the combining of a computer system with the peripheral devices in this case constitutes packaging activities.

(c) AFG Computers, Inc., an in-state company, manufactures and sells at retail computer systems. AFG sells a computer system to Joe for a lump sum. Joe purchases from AFG, as part of the sales package, prewritten computer software developed by a third-party software developer. AFG installs the prewritten computer software to Joe's computer. AFG is subject to retailing B&O tax and must collect retail sales tax from Joe on the sale of the computer system, including the bundled prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system, including the value of the prewritten computer software. AFG is entitled to claim a multiple activities tax credit.

(d) Same facts as (c) of this subsection, except that AFG sells and installs the prewritten computer software after Joe purchases and takes possession of the computer system. AFG is subject to retailing B&O tax and must collect retail sales tax from Joe on the sale of the computer system and the prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system. AFG is entitled to claim a multiple activities tax credit. AFG is not subject to manufacturing B&O tax on the value of the prewritten computer software, because the installation of the software by AFG is not a part of AFG's manufacturing activity.

~~((PART II - TAXATION OF COMPUTER HARDWARE~~

~~(201))~~ **(3) Taxation of computer hardware, both internal and external peripheral devices.**

(a) **What is computer hardware?** For purposes of this section, "computer hardware" includes, but is not limited to, the mechanical, magnetic, electronic, or electrical components of a computer system such as towers, motherboards, central processing units (CPU), hard disk drives, memory, as well as internal and external peripheral devices such as compact disk read-only memory (CD-ROM) drives, compact disk rewriteable (CD-RW) drives, zip drives, internal and external modems, wireless fidelity (Wi-Fi) devices, floppy disks, compact disks (CDs), digital versatile disks (DVDs), cables, mice, keyboards, printers, monitors, scanners, web cameras, speakers, and microphones.

(b) **Wholesale sale of computer hardware.** Gross proceeds of sales of computer hardware to persons other than

consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification. To verify the wholesale nature of the sale, the seller should obtain a ~~((resale certificate))~~ reseller permit from the buyer as provided by WAC 458-20-102 ~~((Resale certificates))~~ (Reseller permits).

(c) **Retail sale of computer hardware.** Gross proceeds of sales of computer hardware to consumers are subject to B&O tax under the retailing classification. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

(d) **Manufacturing of computer hardware.** Persons manufacturing computer hardware are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of computer hardware who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

~~((202))~~ **(4) Examples.**

(a) ALM Computers, Inc., purchases used computers. ALM replaces a built-in CD-ROM drive with a CD-RW drive and adds a zip drive, additional memory, and an upgraded CPU. ALM is engaged in manufacturing activity subject to manufacturing B&O tax with respect to that computer.

(b) AJK Computers, Inc., acquires damaged computers for refurbishment and sale. AJK removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers in this manner is not a manufacturing activity. Retail sales of such refurbished computers are subject to retailing B&O tax and retail sales tax.

(c) APQ Computers, Inc., purchases computers for refurbishment and sale. APQ replaces the failed zip drive on one of the computers with an upgraded zip drive because the upgrade is the nearest version of the failed component that is available. The manufacturer has discontinued manufacturing the original version of the zip drive because of a flaw in the design. APQ is not engaged in manufacturing activity with respect to that computer. Retail sale of that refurbished computer is subject to retailing B&O tax and retail sales tax.

(d) ATV Computers, Inc., is hired by a call center company to repair damaged computers. ATV removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers in this manner is not a manufacturing activity; however, it is a retail service. Refurbishing computers in this manner is subject to retailing B&O tax and retail sales tax must be collected. See WAC 458-20-173 (services on tangible personal property) for more information on repairs and maintenance.

~~((203))~~ **(5) Taxation of other activities associated with computer hardware.**

(a) **Installing computer hardware.** Gross proceeds of sales for installing computer hardware are subject to wholesaling or retailing B&O tax, as the case may be. Installation of computer hardware for consumers is subject to retail sales tax. See ~~((WAC 458-20-145))~~ RCW 82.32.730 (sourcing) for more information on sourcing retail sales of computer services. See WAC 458-20-173 (services on tangible personal property) for more information on installations.

(b) **Repairing or maintaining computer hardware.** Gross proceeds of sales for repair or maintenance of computer hardware are subject to wholesaling or retailing B&O tax. Repair of computer hardware for consumers is subject to retail sales tax. See ~~((WAC 458-20-145 (sourcing)))~~ RCW 82.32.730 for more information on sourcing ~~((retail sales))~~. See WAC 458-20-173 (services on tangible personal property) for more information on repairs and maintenance. Also, see WAC 458-20-257 (Warranties and maintenance agreements) for information about repair performed as part of a warranty or maintenance agreement.

~~((PART III TAXATION OF COMPUTER SOFTWARE))~~

~~(301) What is computer software? RCW 82.04.215 provides that "computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. "Computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software. Computer software does not include data.~~

~~(a) How is computer software delivered? Computer software may be delivered either by intangible means such as electronically or by tangible means such as tangible storage media.~~

~~(b) What is automatic data processing equipment? "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment.~~

~~(c) What are retained rights? "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensee, or distributor. RCW 82.04.215.~~

~~(d) What are master copies of software? "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensee, or distributor makes copies for sale or license. RCW 82.04.215.~~

~~(i) Development of a master copy of software. Development of a master copy of software by a software developer, or a third party hired by the software developer, that is used to produce copies of software for sale or commercial or industrial use, is not a manufacturing activity. A third party charge for development of a master copy of software is a charge for custom software development and is subject to service and other activities B&O tax.~~

~~(ii) Use of prewritten computer software by software developer. The internal use of prewritten computer software~~

by the developer of that software is not subject to use tax because the software developer is not an end user of its own internally developed software. For example, VV Software, Inc., an in-state software developer, creates accounting software generally used by small businesses. VV plans to sell its newly created software to other companies. VV also plans to make a copy of this software and use it for its accounting operation. The copy of software used by VV for its accounting operation is not subject to use tax.

**(302) What is custom software?** "Custom software" is software created for a single person. RCW 82.04.215. The use of library files in software development does not preclude such software from being characterized as custom software, as long as the software is created for a single person. The nature of custom software does not change when ownership is transferred to a person with no rights retained by the transferor.

For purposes of this section, "library files" are a collection of precompiled and frequently used routines that a software developer can use in developing the software.

**(a) Creation of custom software.** Gross income received for creating custom software is subject to service and other activities B&O tax.

**(b) Duplication of custom software.** Duplication of custom software for the same person, or by the same person for the person's own use, does not change the character of the custom software. RCW 82.04.29001. Duplication of custom software for the same person, or by the same person for its own use, is not subject to manufacturing B&O tax.

If a person duplicates custom software for sale to or use by another person other than the original purchaser, the software becomes prewritten computer software as defined in subsection (303) of this section and is subject to manufacturing B&O tax if the prewritten computer software is delivered by tangible storage media.

**(c) Sale of custom software.** If custom software is sold to another person other than the original purchaser, the software loses its character as custom software and becomes prewritten computer software as defined in subsection (303) of this section.

**(d) Use of custom software.** Use of custom software is not subject to use tax.

**(e) Example.** PFC, Inc., offers data base management software on-line to its client through remote access for a monthly fee. PFC developed its software for the specific client and stored the software on its server. PFC is not subject to manufacturing B&O tax or use tax because the data base management software is custom software. PFC's income from the sale of the custom software to the one specific client is subject to service and other activities B&O tax. Additionally, income received for client access and use of the software is subject to service and other activities B&O tax. PFC is hosting its own software for client access and use. See subsection (401)(g) of this section for treatment of gross income received for providing remote access to software applications such as an ASP provides.

**(303) What is prewritten computer software?** RCW 82.04.215 provides that "prewritten computer software" is computer software, including prewritten upgrades, that is not

designed and developed by the author or other creator to the specifications of a specific purchaser.

The combining of two or more prewritten computer software programs or prewritten portions thereof does not result in custom software. Configuration of prewritten computer software to work with other computer software does constitute customization of prewritten computer software.

Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser.

Where a person, who is not the author or creator, modifies or enhances prewritten computer software, that person is deemed to be the author or creator only of the modifications or enhancements made. Prewritten computer software, or a portion thereof, that is modified or enhanced to any degree, remains prewritten computer software, even though the modification or enhancement is designed and developed to the specifications of a specific purchaser. Where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement will not be considered prewritten computer software.

**(a) Wholesale sales of prewritten computer software.** Gross proceeds from sales of prewritten computer software to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the wholesale nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. To verify the wholesale nature of the sale, the seller obtains a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

**(i) Distinction between wholesale sales of prewritten computer software and royalties received for the licensing of prewritten computer software.** Sales of prewritten computer software constitute wholesale sales if the reseller, who has no right to reproduce the software for further sales, sells the same software to its customers. The true object of the sale to the reseller is the sale of the software. On the other hand, income received for granting an intangible right to reproduce and distribute copies of prewritten computer software for sale constitutes royalties. The true object of the transaction that generates royalty income is the right to reproduce and relicense the software. See subsection (308) of this section for more information on royalties.

**(ii) Examples.** The examples presume sellers have nexus with Washington.

(A) UM Computers, Inc., is a software developer that develops engineering software. UM sells the prewritten computer software at wholesale to OX Computers, Inc., in shrink-wrapped packages. UM delivers the software to OX. OX then resells the software to customers in the same shrink-wrapped packages. Sales of prewritten computer software by UM are

subject to wholesaling B&O tax. Sales by OX to consumers are retail sales subject to retailing B&O tax and retail sales tax.

(B) GB Computers, Inc., is a software developer that develops engineering software. GB grants SE Computers, Inc., the right to reproduce and distribute copies of the prewritten computer software for sale. GB retains all of its ownership rights to the software and delivers one copy of the software to SE to reproduce. Amounts received from GB granting the right to reproduce and distribute prewritten computer software to SE are subject to royalties B&O tax. Sales by SE to consumers are retail sales subject to retailing B&O tax and retail sales tax.

(C) DH Computers, Inc., is a software developer that develops engineering software. DH grants the right to sell its engineering prewritten computer software to WK Computers, Inc. DH delivers the software electronically to WK. WK then sells the software to its customers, who download the software from WK. Income to DH is subject to royalties B&O tax. Sales of prewritten computer software by WK to its customers are retail sales subject to retail sales tax.

(D) AJ Soft, Inc., is a software developer of architectural drafting software. AJ Soft enters into an agreement with DJ Sales, Inc., to sell AJ Soft's drafting software. DJ Sales must pay a fee for each copy DJ Sales sells through its web site. AJ Soft does not allow DJ Sales to reproduce the drafting software. Customers download the software, but are unaware the software is downloaded directly from AJ Soft. AJ Soft is making a wholesale sale of software to DJ Sales subject to wholesaling B&O tax. DJ Sales is making a retail sale to its Washington customers subject to retail sales tax.

**(b) Retail sales of prewritten computer software.** Gross proceeds of sales of prewritten computer software to consumers are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the retail nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

**(c) Use of prewritten computer software.** Prewritten computer software, regardless of the method of delivery, is generally subject to use tax upon use in this state if Washington retail sales tax was not previously paid. However, use of prewritten computer software is not taxable, if it is provided free of charge, or if it is provided for temporary use in viewing information, or both. RCW 82.12.020. This exception from use tax is limited to prewritten computer software provided free of charge or for temporary use in viewing information, such as free promotional software, donated software, free download of software, and software provided in beta testing to a third party free of charge.

For purposes of this use tax exception, "beta testing" means the last stage of testing for prewritten computer soft-

ware prior to its commercial release including the release to manufacturing (RTM). Beta testing may involve sending the software to a third party for the use of the third party. Beta testing is often preceded by a round of testing called alpha testing.

**(i) Example.** DS Computers, Inc., is a software developer. In order to perform beta testing of its new accounting software prior to commercial release, DS sends a copy of the software free of charge to KG Technologies, Inc. DS is not subject to use tax for the release of the beta software to KG. KG is not subject to use tax for the use of beta software free of charge.

**(ii) Example.** DH, Inc., provides free card games on-line to its customers. The customers, however, must download DH's free software in order to be able to play card games on-line at DH's web site. Wendy downloads the software free of charge. Wendy is not subject to use tax for the use of the software.

**(iii) Example.** DW, Inc., provides free software to the public for anyone to watch videos on-line. Roger downloads the software free of charge. Roger is not subject to use tax for the use of the software.

**(d) Manufacturing of prewritten computer software.** Persons engaged in manufacturing prewritten computer software are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of prewritten computer software who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

**(e) Duplication of prewritten computer software.** Duplication of prewritten computer software for sales to or use by more than one person is subject to manufacturing B&O tax upon the value of products. Duplication of prewritten computer software outside this state is not subject to manufacturing B&O tax regardless of where software development takes place.

Duplication of prewritten computer software is a manufacturing activity only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120.

When a software developer contracts with a third party to duplicate prewritten computer software, the parties must take into account the value of all tangible and intangible materials or ingredients, including the software code, when determining the relative value of all materials or ingredients furnished by each party. If the third party furnishes less than twenty percent of the total value of all materials or ingredients that become a part of the produced product, then the third party is presumed to be a processor for hire and the software developer is presumed to be a manufacturer. See WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information.

**(304) Site license of prewritten computer software.** A site license provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

**(a) Retail sales of a site license.** Gross proceeds of sales of a site license to a consumer are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the consumer, and regardless of any express or implied restrictions upon the consumer. Delivery occurs when and where the prewritten computer software subject to the site license is received by the consumer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing prewritten computer software. See also WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for details regarding reporting procedures and revenue recognition of retail sales of a site license. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the consumer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

If the prewritten software is hosted by the licensor or a third party for remote access by the licensee (e.g., an Application Service Provider (ASP)), then see subsection (401)(g) of this section.

**(b) Duplication of prewritten computer software by a person under a site license.** A seller of a site license is subject to manufacturing B&O tax for its own duplication of prewritten computer software. Duplication of prewritten computer software is subject to manufacturing B&O tax only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120. Purchaser of a site license is not subject to manufacturing B&O tax for the duplication of prewritten computer software for its own use, pursuant to a site license agreement with the seller.

**(c) Use of a site license partly in this state and partly outside this state.** Where the use of a site license is partly in this state and partly outside this state, the part of the site license used by the person in this state is subject to use tax, provided Washington state sales tax was not previously paid. For example, a person purchases and takes delivery of a site license in California. Pursuant to the multiple site license agreement, this person is licensed to use one thousand copies of prewritten computer software, of which four hundred copies will be used in Washington. Use tax is due on the four hundred copies of prewritten computer software used in this state. If the prewritten software purchased by the licensee is delivered in Washington, then the entire charge for the site license is subject to retail sales tax if purchased from a seller responsible for collecting Washington's sales tax.

**(d) Sales and use of additional copies of prewritten computer software under the same site license.** In some

cases, the buyer of a site license may subsequently purchase additional copies of prewritten computer software under the same site license agreement. The seller may or may not deliver any additional copy of the software to the buyer, because the original copy of the software has already been delivered.

**(i) Retail sales of additional copies of prewritten computer software under the same site license.** Retail sales of the additional copies of software occurs when and where the seller delivers any additional copy of prewritten computer software to the buyer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of prewritten computer software. If the seller does not deliver any additional copy of the software to the buyer, then the sales occur when the sales agreements are made to purchase the additional copies and where the original copy or copies of prewritten computer software was delivered. If the original sale of the site license was subject to manufacturing B&O tax, then the sale of additional licenses are also subject to manufacturing B&O tax.

Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

**(ii) Use of additional copies of prewritten computer software under the same site license.** Where the use of the additional copies of software is partly in this state and partly outside this state and was not previously subject to Washington sales tax, the part of the additional copies of software used by the person in this state is subject to use tax.

**(e) Examples.**

**(i)** DEF Computers, Inc., is located in Washington and sells in this state at retail a multiple site license of its prewritten computer software to P's Design, Inc. A copy of the prewritten computer software is electronically delivered to P's Design in Washington. P's Design then electronically duplicates the software and distributes the software in Washington and several other states for its use. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software.

**(ii)** Same facts as (e)(i) of this subsection, except that in addition, DEF delivers a backup copy of the software to P's Design outside Washington. The backup copy of the software is for disaster recovery purposes and is not downloaded to any of P's Design's computers for use. There is no separate charge for the delivery of the backup software. The software manuals are mailed to P's Design in Washington. DEF is still subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software. Delivery of the software manuals and the backup copy of the software are not relevant in determining when and where the sale takes place. This transaction is not subject to manufacturing B&O tax.

**(iii)** Same facts as (e)(i) of this subsection, except that in addition, P's Design subsequently purchases 50 additional copies of the software from DEF under the same site license agreement. P's Design merges with another company, and the additional copies are needed for the use of its new employees.

No additional copy of the software is delivered to P's Design in fulfilling this new agreement. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the subsequent sale of the 50 additional copies of software because the original copy of the software was delivered in Washington. However, if the original sale of the license had included delivery of the prewritten software by a tangible storage device (and was therefore subject to manufacturing B&O tax), then the licensor is also subject to manufacturing B&O tax based on the value of the additional licenses.

~~(iv) GH Computers, Inc., sells at retail a multiple site license of its prewritten computer software to Quick, Inc. GH is located outside Washington, while Quick is located in Washington and in other states and outside the U.S. The desktop software is licensed on an unlimited basis, which means that there are no restrictions of its use by Quick. The software is delivered to Quick outside Washington. Quick then electronically duplicates the software and distributes the software to all of its 500 employees, of which 100 employees are located in Washington. The software is electronically downloaded into the desktop computers of all employees and is immediately put into use. Use tax is due on the value of the 100 copies of prewritten computer software used in Washington.~~

~~(v) Same facts as (e)(iv) of this subsection, except that under the original site license agreement, Quick is entitled to reproduce, distribute, and use up to 500 copies of the desktop software. Then Quick merges with another company, and additional copies are needed for the use of its new employees. Quick, therefore, subsequently purchases 100 additional copies of the software from GH under the same site license agreement. No additional copy of the software is delivered to Quick in fulfilling this new agreement. Quick distributes the additional copies of the software to its 100 new employees, of which 50 employees are located in Washington. Use tax is due on the value of the 50 additional copies of prewritten computer software used in Washington.~~

~~(vi) JJ Computers, Inc., sells at retail a multiple site license of its prewritten computer (server) software to Rest, Inc. JJ is located outside Washington, but Rest is located in Washington and in other states. The server software is delivered to Rest outside Washington. Rest then electronically duplicates the software and distributes the software to its three servers for immediate use. One of the servers is located in Washington, and the other two servers are located outside Washington. Use tax is due on the value of the copy of the prewritten computer (server) software on the server in Washington.~~

~~(305) Key to activate computer software.~~ A key, or an enabling or activating code, may be required in some instances to activate computer software and put the software into use, and the key may be delivered to a purchaser after the software is already delivered and in possession of the same purchaser. In such instances, the entire sale of computer software occurs when both the key and the software are delivered to the purchaser. The sale takes place where the software is received by the purchaser in accordance with RCW 82.32.730. However, if the receiving location for the soft-

ware is unavailable to the vendor because the software was delivered by a third party, then the sale takes place where the key is received in accordance with RCW 82.32.730. There is no separate sale of the key from the software, regardless of how such sale may be characterized by the vendor or by the purchaser.

See subsection (304) of this section for more information if a site license of prewritten computer software is involved. If the sale of the prewritten software is subject to manufacturing B&O tax, then the sale of the key required by that prewritten software is also subject to manufacturing B&O tax. The income from the sale of a key is part of a sale of prewritten computer software, whether the sales transactions are together or separate.

~~(a) Example.~~ JKL Computers, Inc., an in-state business, sells at retail prewritten computer software to Rebecca. JKL delivers the software to Rebecca in this state. The prewritten computer software, however, cannot be activated without a key. JKL subsequently delivers the key in this state to Rebecca for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from Rebecca on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to Rebecca. There is no separate sale of the key, regardless of the fact that JKL delivers the key to Rebecca for a separate charge.

~~(b) Example.~~ Same facts as (a) of this subsection, except that JKL subsequently delivers the key outside this state to Rebecca for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from Rebecca on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to Rebecca. There is no separate sale of the key, regardless of the fact that JKL delivers the key to Rebecca for a separate charge.

~~(c) Example.~~ MNO Computers, Inc., is an in-state software developer. TKO Computers, Inc., an out-of-state original equipment manufacturer (OEM), agrees in contract with MNO to distribute MNO's prewritten computer software. TKO delivers MNO's inoperable software to Sally as part of the sale of the computer system. Sally, however, must purchase a key directly from MNO in order to activate and use the software. MNO has no knowledge of where the software was initially delivered to Sally, but MNO knows that the key is delivered to Sally in this state. MNO is subject to retailing B&O tax, and it must collect retail sales tax from Sally on the entire sale of the key and the inoperable software. The entire sale takes place in this state because the key is delivered in this state and MNO has no knowledge of where the inoperable software was initially delivered by TKO. Assuming TKO delivers MNO's software to Sally electronically, then duplication of the key would not be subject to manufacturing B&O tax. If TKO delivers the software on tangible storage media, then the key would be subject to manufacturing B&O tax.

~~(306) Client access license and server license for the server software.~~ A server license, paid for at the time the server software is purchased, grants the buyer the right to install the server software on the buyer's server. A client

access license (CAL) grants the buyer the right to access the server software. The CAL is not computer software and is not downloaded into the buyer's computer.

Charges for server licenses and CAL are a part of the sale of the server software, even if the charges are separately stated. The sales take place where the server software is delivered to the buyer.

In cases where server software is delivered to the buyer and used in multiple locations, see subsection (304) of this section on site licenses for more information.

(a) **Example.** ZZ Computers, Inc., an in-state business, sells at retail server software to Jack. ZZ delivers the server software to Jack in Washington. ZZ also provides Jack with client access licenses allowing Jack the right to access the server software from his personal computers. The sale of server software to Jack is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack for the same sale.

(b) **Example.** Same facts as (a) of this subsection, except that ZZ makes two separate sales at retail of two types of prewritten computer software to Jack. One is server software, and the other is client software (which is different from client access licenses). ZZ delivers the server software to Jack in Washington where Jack's server is located. ZZ delivers the client software to Jack outside Washington where all of Jack's personal computers are located. Only the sale of server software to Jack is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack for the same sale.

**(307) Other activities associated with computer software.**

(a) ~~Customizing prewritten computer software.~~ Gross income received for customizing prewritten computer software is subject to service and other activities B&O tax. RCW 82.04.29001.

(i) ~~What is customizing prewritten computer software?~~ RCW 82.04.215 provides that "customization of prewritten computer software" is any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person.

"Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(ii) ~~Combined charge for prewritten computer software, customization, and routine installation.~~ If a lump-sum charge is made for a sale of prewritten computer software, customization of prewritten computer software, and routine installation, the entire charge is considered to be a sale of prewritten computer software. See (a)(iv) of this subsection for more information on routine installation.

(iii) ~~Separately stated charge for customization of prewritten computer software.~~ Where there is a reasonable separately stated charge on an invoice or other statement of the price given to the purchaser for customization of prewritten computer software (including installation that is not routine, see (a)(i) of this subsection), such customization is subject to service and other activities B&O tax. If a charge for customization of prewritten computer software is not separately stated from a sale of prewritten computer software, the

entire charge is considered a sale of prewritten computer software.

(iv) ~~Customization of prewritten computer software versus routine installation.~~ Customization of prewritten computer software does not include routine installation. "Routine installation" means the process of loading program files and installation files onto a computer. Routine installation does not include installation of the customized elements of prewritten computer software.

(v) ~~Separately stated charge for routine installation from customization of prewritten computer software.~~ Where there is a separately stated charge on an invoice or other statement of the price given to the purchaser for routine installation from customization of prewritten computer software, routine installation is subject to retailing B&O tax and retail sales tax. If a charge for routine installation is not separately stated from customization of prewritten computer software, the predominant nature of the transaction determines taxability.

**(vi) Examples.**

(A) Tee, Inc., is in need of financial modeling software that can tie into most of its existing computer systems. Because of its unique business, however, Tee needs the industry wide computer software offered by PQR Computers, Inc., that is modified to meet the needs of Tee. Both Tee and PQR are in-state corporations, and the software is delivered in this state. PQR provides a separately stated charge to Tee for customization of prewritten computer software performed in this state that is supported by the terms of the sales agreement. PQR is subject to retailing B&O tax, and it must collect retail sales tax from Tee for the sale of prewritten computer software in Washington. PQR, in addition, is subject to service and other activities B&O tax for the customization of prewritten computer software in Washington.

(B) Same facts as (a)(vi)(A) of this subsection, except that, in addition, PQR provides a separately stated charge to Tee for routine installation of prewritten computer software in this state. This charge represents installation of only the prewritten portion of the software. In addition to the tax treatments in (a)(vi)(A) of this subsection, PQR is subject to retailing B&O tax and it must collect retail sales tax from Tee for the routine installation in Washington.

**(b) Installing or uninstalling computer software.**

(i) Gross income received from installing or uninstalling custom software is subject to service and other activities B&O tax.

(ii) Gross proceeds of sales for routine installation of prewritten computer software are subject to retailing B&O tax and retail sales tax. See (a)(iv) of this subsection for more information on routine installation. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of prewritten software and routine installation. Routine installation of prewritten computer software includes charges for labor and services in respect to the installation, such as travel costs for the routine installation of the software. As of July 1, 2008, if the routine installation occurs through remote access by someone outside the state of Washington, then the installation is sourced to where first use occurs. For example, XYZ Computers, Inc., is hired by Dan for routine installation of prewritten software onto Dan's computers. XYZ's out-of-

state employee remotely accesses Dan's computers in Washington to install the prewritten software on his computers. If XYZ has nexus with Washington, then it must collect and remit the sales tax. If XYZ does not have nexus, then Dan must pay use tax.

Gross proceeds of sales of uninstalling prewritten computer software are subject to retailing B&O tax and retail sales tax.

For example, XYZ Computers, Inc., is hired by Dan to remove spy ware from his computers. Spy ware is prewritten computer software. Removal of spy ware requires uninstalling the spy ware from the computer. XYZ sends an employee to Dan's location to remove spy ware from its computers. Charges for removal of spy ware are subject to retailing B&O tax and retail sales tax.

**(e) ~~Repairing, altering, or modifying computer software.~~** Repair of prewritten computer software for more than one person may be distributed as a fix or patch by tangible storage media or electronically in the nature of software upgrades and updates. The sale of prewritten computer software upgrades and updates is a sale of prewritten computer software subject to retailing B&O tax and retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of computer services.

Alteration or modification of prewritten computer software performed for a specific person is subject to the service and other activities B&O tax. Such alteration or modification of prewritten computer software for a specific person constitutes customization of prewritten computer software. See RCW 82.04.215.

Alteration or modification of custom software is subject to service and other activities B&O tax.

**(i) ~~Example.~~** STU Computers, Inc., a Washington company, is hired by Betty to perform repairs via remote access on her prewritten computer software in Washington. STU is performing alteration or modification of prewritten computer software for a specific person and is subject to service and other activities B&O tax.

**(ii) ~~Example.~~** VW Computers, Inc., an out of state service provider, is hired by Clyde to perform alterations or modifications via remote access on his prewritten computer software located in this state. VW's facility is located outside this state. VW may be subject to service and other activities B&O tax if it has nexus with Washington. See WAC 458-20-194 (Apportionment).

**(d) ~~Maintaining computer software.~~** Computer software maintenance agreements typically include, but are not limited to, support activities such as telephone consulting, help desk services, remote diagnostic services, and software upgrades and updates.

**(i) ~~Tax treatment of computer software maintenance agreements in general.~~** Sales of stand-alone computer software maintenance agreements that include telephone consulting, help desk services, remote diagnostic services, and other professional services are taxable under the service and other activities B&O tax. However, if the services are part of a sale of an extended warranty on or after July 1, 2005, then the sale is subject to retailing B&O tax and retail sales tax. See WAC 458-20-257 (Warranties and maintenance agreements) for information about extended warranties.

Stand-alone sales of updates or upgrades to prewritten computer software are retail sales of tangible personal property subject to retailing B&O tax and retail sales tax.

**(ii) ~~Prewritten computer software maintenance agreement with mixed elements.~~** The sale of a prewritten computer software maintenance agreement that includes professional service components such as telephone consulting and retail components such as upgrades and updates of prewritten computer software is a retail sale subject to retailing B&O tax and retail sales tax.

In cases where the charges for the professional service component(s) and the retail component(s) are separately stated within a prewritten computer software maintenance agreement and invoice, then each activity is taxed according to the nature of the activity.

**(iii) ~~Duplication of prewritten computer software upgrades and updates.~~** Duplication of prewritten computer software upgrades and updates is subject to manufacturing B&O tax upon the value of products, if the software upgrades and updates are delivered by means of tangible storage media which is retained by the purchaser. This is the case regardless of any maintenance agreement with mixed elements involved. The measure of tax is presumed to be the contract price of the maintenance agreement, unless the person can prove otherwise. See WAC 458-20-112 (Value of products) for more information.

If the software upgrades and updates are delivered from the seller by means other than tangible storage media which is retained by the purchaser, then the software upgrades and updates are not subject to manufacturing B&O tax.

**(iv) ~~Maintenance agreement on custom software and customized elements of prewritten computer software.~~** Sales of maintenance or support services relating to custom software or the customized elements of prewritten computer software are subject to the service and other activities B&O tax. Such services, including upgrades and updates, are rendered in respect to the custom or customized software and take on the underlying character and taxability of the custom or customized software.

**(v) ~~Examples.~~**

**(A)** On December 15, 2005, CBA Computers, Inc., sells at retail a prewritten computer software maintenance agreement to Frank for his software. The software maintenance agreement includes an extended warranty for the software, software upgrades and updates, and telephone consulting services. CBA delivers the software upgrades and updates electronically, as well as provides the maintenance services to Frank at one charge. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the sale of the mixed agreement.

**(B)** Same facts as (d)(v)(A) of this subsection, except that CBA delivers the software upgrades and updates on compact disks. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the sale of the mixed agreement. In addition, CBA is subject to manufacturing B&O tax on duplication of software upgrades and updates. The measure of tax is presumed to be the contract price of the maintenance agreement, unless CBA can prove otherwise.

(C) Same facts as (d)(v)(A) of this subsection, except that CBA provides a separately stated charge for each component of the maintenance agreement. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the charges on software upgrades and updates and on the extended warranty purchased after July 1, 2005. CBA is subject to service and other activities B&O tax for the charge on telephone consulting services.

(D) FED Computers, Inc., sells at retail a computer software maintenance agreement to Greta for her software. The maintenance agreement covers only software upgrades and updates. Greta's software is prewritten computer software with customized elements. FED provides the maintenance services to Greta at one charge. FED is subject to retailing B&O tax, and it must collect retail sales tax from Greta for the sale of the entire maintenance agreement of the prewritten computer software.

(E) Same facts as (d)(v)(D) of this subsection, except that FED provides a separately stated charge for maintaining the customized elements. FED is subject to service and other activities B&O tax for the charge on maintaining the customized elements. FED is subject to retailing B&O tax, and it must collect retail sales tax from Greta for the charge on maintaining prewritten computer software.

~~(e) Computer software training.~~ Gross income received for training on the use of custom software is subject to service and other activities B&O tax. Gross income received for training on the use of prewritten computer software is subject to service and other activities B&O tax, if the charge for such training is separately stated from the sale of prewritten computer software. If the charge for software training is not separately stated from the sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software subject to retailing B&O tax and retail sales tax.

~~(308) Licensing computer software — royalties.~~ Income received from charges in the nature of royalties for the licensing of computer software is taxable under the royalties B&O tax classification.

~~(a) What are royalties?~~ RCW 82.04.2907 provides that "royalties" is compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. The true object of a transaction involving royalties is to grant an intangible right to reproduce and distribute copies of computer software for sale. It does not, however, include compensation for the licensing of prewritten computer software to the end user. The manner in which computer software is sold (e.g., volume of transactions, subscription license, term license, or perpetual license) or the manner in which payment amount is determined (e.g., fixed fee per copy, percentage of receipts, lump sum, etc.) does not alter the royalty nature of the transaction.

~~(b) Royalties versus site license.~~ Regarding royalties, the true object of the transaction is to grant an intangible right to reproduce and distribute copies of computer software for sale. In contrast, the true object of a site license is the sale to an end user of prewritten computer software for use on its computers. See subsection (304) of this section for more information on site licenses.

~~(e) Royalties versus wholesale sales of prewritten computer software.~~ See subsection (303)(a) of this section for more information.

~~(d) Examples.~~

~~(i) HG Computers, Inc., an original equipment manufacturer (OEM), acquires prewritten computer software from LL Software, Inc., under a license to reproduce and distribute the prewritten computer software as part of a bundled computer hardware and software package HG sells to end users. LL retains all of its ownership rights to the software. The gross income received by LL from granting intangible rights to reproduce and distribute prewritten computer software to HG is subject to royalties B&O tax.~~

~~(ii) Same facts as (d)(i) of this subsection, except that, in addition, HG acquires a site license from LL for the purposes of using the prewritten computer software as an end user. LL delivers the software to HG. Amounts received by LL for the sale of a site license are subject to retailing B&O tax and retail sales tax.~~

~~(309) Special use tax exemption for computer hardware and computer software donated to certain schools or colleges.~~ Use tax does not apply to the use of computer hardware and computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW. RCW 82.12.0284.

#### **PART IV — TAXATION OF INFORMATION SERVICES AND COMPUTER SERVICES**

~~(401) Activities associated with information services and computer services.~~ For services described below that are subject to service and other activities B&O tax, see WAC 458-20-194 (Doing business inside and outside the state) for more information on the apportionment of service and other activities B&O tax for taxpayers who maintain places of business both within and without the state that contribute to the rendition of the services.

~~(a) Sales of information services.~~ Gross income received for information services is subject to service and other activities B&O tax.

~~(i) What are information services?~~ "Information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. "Information services" does not include transfers of tangible personal property such as computer hardware or standard prewritten software programs. Neither does "information services" include telecommunication services defined under RCW 82.04.065.

Effective August 1, 2007, and in accordance with RCW 82.08.705 and 82.12.705, a sales and use tax exemption is provided for sales of electronically delivered standard financial information, if the sale is to an investment management company or a financial institution. Standard financial information is defined as "any collection of financial data or facts, not compiled for a specific consumer, including financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports." See RCW 82.08.705.

**(ii) Examples.**

(A) XX Statistical Data, Inc., sells statistical data at the specific request of each customer. XX does not compile such statistical information to be available for all customers. Instead, each customer submits its own request of the statistical information based on its needs. XX compiles, analyzes, and summarizes the statistical information it gathers and sends the information to customers in a tangible medium. XX is subject to service and other activities B&O tax for the sales of statistical information, because XX is providing an information service at the specific request of each customer.

(B) ZZ Statistical Data, Inc., allows its customers to perform on-line research of statistical information through its data base. ZZ bills its customers a monthly fee for having on-line access to the data base for research. Its customers do not download any information onto their computers. ZZ is subject to service and other activities B&O tax for providing information services to its customers.

(C) WW Travel, Inc., bills its customers a monthly fee for having access to a travel reservation system that includes a charge for dedicated telephone lines. WW is subject to service and other activities B&O tax for providing information services, rather than a telecommunications service. The provider of dedicated telephone lines to WW must collect retail sales tax from WW on the sale of telecommunications service. WW is the consumer of telecommunications service.

(D) VV Telephone, Inc., provides a satellite-based tracking and communications system that includes instant messaging between vehicles in transit and dispatch centers. Both the vehicles and the dispatch centers are operated by its customers, and information is both generated and received by the customers. This is not a sale of information service. The true object of the transaction is the transmission of data between the vehicles and the dispatch centers through VV's communications system. VV is providing telecommunications services subject to retailing B&O tax, and it must collect retail sales tax on the sale of telecommunications services. See RCW 82.32.520 for sourcing of telecommunications services.

(E) AA Data, Inc., provides a daily report of bond ratings for electronic download by its investment management company consumers. Each investment management company downloads the same report. As of August 1, 2007, AA provides standard financial information that falls within the exemption found in RCW 82.08.705 and 82.12.705. Therefore, AA does not collect or remit retail sales tax.

**(b) Sales of data processing services.** Gross income received for data processing services is subject to service and other activities B&O tax.

"Data processing services" includes, but is not limited to, word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

**(i) Example.** JK Processing, Inc., provides payroll processing services to other businesses. JK is subject to service

and other activities B&O tax for providing data processing services.

**(ii) Example.** KL Processing, Inc., processes payroll data related to its employees. KL is not subject to manufacturing B&O tax or use tax for the electronic processing of its own data.

**(e) Sales of internet services.** Gross income received for internet services are subject to service and other activities B&O tax.

**(i) What is the internet?** "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the world wide web. RCW 82.04.297.

**(ii) What are internet services?** "Internet service" is a service furnished by an internet service provider (ISP) that allows users access to the internet. The ISP must provide the service through use of computer processing applications that either provide the user with additional or restructured information or permit the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes the following services furnished by the ISP:

- Provision of internet electronic mail;
- Access to the internet for information retrieval; and
- Hosting of information for retrieval over the internet.

"Internet service" does not include telecommunications service as defined in RCW 82.04.065.

**(iii) What is a proprietary subscriber network?** "Proprietary subscriber network" means proprietarily or privately owned network in which its services are available to the public for fees. Proprietary subscriber network does not include intranets.

**(iv) Examples.**

(A) ISP, Inc., is an internet service provider that provides customers with access to the internet. ISP does not furnish any telephone lines to its customers in providing this access. ISP maintains its operation in Washington. Amelia is charged a monthly internet access fee from ISP for access to the internet in Washington. ISP is subject to service and other activities B&O tax for the monthly internet access fee charged to Amelia.

(B) Same facts as (e)(iv)(A) of this subsection, except that ISP provides customers with access to the internet along with telephone lines used to provide that access. Amelia is charged a combined monthly fee for access to the internet in Washington using the telephone lines. ISP is subject to service and other activities B&O tax for the combined fee, because the true object of the transaction is to provide access to the internet, rather than to provide telecommunications service.

(C) Telecomm Co. provides customers with telephone lines for telecommunications, including long distance service, and for access to the internet (internet services). Zoe is charged a combined monthly fee for access to the internet and for communication services in Washington using the telephone lines. Telecomm Co. is subject to retailing B&O tax for the combined fee because the primary purpose of the transaction is to provide telecommunications service, rather than to provide access to the internet. However, if Telecomm

Co. separately states or can reasonably identify from its books and records the fees for telecommunications service and internet access, then Telecomm Co. will be subject to retail and service classifications respectively.

(D) **DD Computers, Inc.**, provides access to information through its web site for which it charges its users a fee. DD charges Stan, an out of state customer, a transaction fee to use DD's web site to search and retrieve real estate appraisal information. DD is not providing internet service because DD is not an ISP and does not provide customers with access to the internet. DD, however, is providing Stan access to its web site for informational search and retrieval which is subject to service and other activities B&O tax.

(d) **Sales of intranet services.** Gross proceeds of sales of intranet services are sales of telecommunications service defined under RCW 82.04.065 and are subject to retailing B&O tax and retail sales tax.

"Intranet service" means the service of providing a private or intracompany network used by a person to facilitate the sharing or accessing of internal information by the person's employees or other authorized parties.

(e) **Sales of Voice over Internet Protocol (VoIP) services.** "VoIP service" is a service that enables subscribers to use the internet as the transmission medium for telephone calls by sending voice data in packets in internet protocol. Gross proceeds of sales of VoIP services are sales of telecommunications service defined under RCW 82.04.065 subject to retailing B&O tax and retail sales tax.

(f) **Sales of network system support services.** Gross income received for network system support services is subject to service and other activities B&O tax. "Network system support" activities include analyzing and interpreting problems using diagnostic software, monitoring network to ensure network availability to users, and performing network system configurations. Network system support activities may be performed through remote telephone support or on-site consulting.

(g) **Sales of remote access to prewritten software. I.e., application service providers (ASPs) or software as a service (SAAS).** Gross income received for providing remote access to applications on the host's servers are subject to service and other activities B&O tax, when the service is performed in Washington. Sellers of remote access to applications (e.g., ASPs) may be able to apportion income if they perform activities in multiple states (i.e., servers used in multiple states to host the software). See WAC 458-20-194 (apportionment).

"ASP" means a provider that generally offers customers with electronic access to applications on the ASP's server. ASP generally does not provide computer software for customers to download. ASP, however, may provide downloadable codes in order for customers to access its applications on its server that are only incidental to the services provided to customers.

(i) **Example.** BE Software, Inc., offers a variety of prewritten software products on-line, but not for download, to its customers for a monthly subscription fee. BE Software is subject to service and other activities B&O tax for its subscription fees received.

(ii) **Example.** Same facts as (g)(i) of this subsection, except that, in addition, BE provides computer software for customers to download before the on-line software can be used. The downloaded software does not provide any function other than confirm registration and provide access codes necessary for a customer to be able to use the on-line software. The downloaded software is provided as part of the monthly subscription fee. Once the subscription ends, the access software the customers downloaded will not perform any function. BE Software is subject to service and other activities B&O tax for its subscription fees received, because the true object of the transaction is to provide on-line software to its customers.

(iii) **Example.** Same facts as (g)(i) of this subsection, except that, in addition, BE offers an option to allow its customers to download a limited number of software applications for an additional fee. Kelly purchases and downloads a number of additional prewritten software packages from BE in this state. BE is subject to retailing B&O tax, and BE must collect retail sales tax from Kelly on the additional fee for the sale of downloaded software.

(h) **Sales of web site development or hosting services.** Gross income received for web site development or hosting services are subject to service and other activities B&O tax.

"Web site development service" means the design and development of a web site provided by a web site developer to a customer. "Web site hosting service" means providing server space to host a customer's web site.

(i) **Sales of on-line advertising services.** Gross income received for on-line advertising services are subject to service and other activities B&O tax. See RCW 82.04.280 and 82.04.214 for tax treatment of the electronic form of a printed newspaper.

For example, BB.com sells souvenir items through the internet. BB.com provides on-line advertising services for third parties. Income received for on-line advertising services is subject to service and other activities B&O tax.

(j) **Sales of data warehousing services.** Gross income received for data warehousing services is subject to service and other activities B&O tax. "Data warehousing service" means the service of a provider offering server space for a customer to store its data and to access, retrieve, or use the data as needed.

(i) **Example.** HH Recovery, Inc., provides substitute computer systems so that its customers may access its computer facilities for disaster recovery purposes, if such customers experience unplanned computer system failures. Lanece pays a monthly subscription fee for this service. HH is subject to service and other activities B&O tax for the sale of data warehousing services to Lanece.

(ii) **Example.** Same facts as (j)(i) of this subsection, except that, in addition, HH performs "live" data backup for disaster recovery purposes. HH purchases prewritten computer software to perform "live" backup of data. HH is subject to use tax for the use of prewritten computer software to perform "live" backup of data.

**~~PART V – DISTINCTION BETWEEN SALES AND SERVICES~~**

~~(501) Current WAC 458-20-155 makes a distinction between sales and services. Liability for sales or use tax depends upon whether the subject of the sale is a product or a service. Professional and personal services rendered to a client are not generally subject to retail sales or use tax. If the consumer's true object of the transaction is obtaining professional or personal services, similar to those performed by a public accountant, architect, lawyer, etc., then the retail sales or use tax is not applicable. The retail sales and use tax is not applicable because these services are performed to meet a consumer's specific needs and any property transferred in the transaction is considered the medium in or on which those services are rendered and is merely the tangible evidence of a professional service rendered.~~

~~If the true object of the transaction is a product made available to any consumer and not created to meet the particular needs of a specific consumer, regardless of the method of delivery, then the transaction is taxable under the retailing B&O tax classification and taxable as a retail sale. The term "product" includes tangible personal property, such as pre-written software. This is no different from a usual inventory of tangible personal property held for sale or lease, and the sale or lease of such products is a sale at retail subject to retail sales tax or use tax.~~

~~Please see WAC 458-20-155 for more information.))~~

NEW SECTION

**WAC 458-20-15502 Taxation of computer software.**

(1) **What is computer software?** RCW 82.04.215 provides that "computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. "Computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software. Computer software does not include data.

(a) **How is computer software delivered?** Computer software may be delivered either by intangible means such as electronically downloaded or by tangible means such as tangible storage media.

(b) **What is automatic data processing equipment?** "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment.

(c) **What are retained rights?** "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor. RCW 82.04.215.

(d) **What are master copies of software?** "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. RCW 82.04.215.

(i) **Development of a master copy of software.** Development of a master copy of software by a software developer, or a third party hired by the software developer, that is used to produce copies of software for sale or commercial or industrial use, is not a manufacturing activity. A third-party charge for development of a master copy of software is a charge for custom software development and is subject to service and other activities B&O tax.

(ii) **Use of prewritten computer software by software developer.** The internal use of prewritten computer software by the developer of that software is not subject to use tax because the software developer is not an end user of its own internally developed software. For example, VV Software, Inc., an in-state software developer, creates accounting software generally used by small businesses. VV plans to sell its newly created software to other companies. VV also plans to make a copy of this software and use it for its accounting operation. The copy of software used by VV for its accounting operation is not subject to use tax.

(2) **What is custom software?** "Custom software" is computer software created for a single person. RCW 82.04.215. The use of library files in software development does not preclude the developed software from being characterized as custom software, as long as the software is created for a single person. The nature of custom software does not change when ownership is transferred to a person with no rights retained by the transferor.

For purposes of this section, "library files" are a collection of precompiled and frequently used routines that a software developer can use in developing the software. The purchase or use of such "library files" may be subject to retail sales or use tax as the sale of prewritten software.

(a) **Creation of custom software.** Gross income received for creating custom software is subject to service and other activities B&O tax.

(b) **Duplication of custom software.** Duplication of custom software for the same person, or by the same person for the person's own use, does not change the character of the custom software. RCW 82.04.29001. Duplication of custom software for the same person, or by the same person for its own use, is not subject to manufacturing B&O tax.

If a person duplicates custom software for sale to or use by another person other than the original purchaser, the software becomes prewritten computer software as defined in subsection (3) of this section and is subject to manufacturing B&O tax if the prewritten computer software is delivered by tangible storage media.

(c) **Sale of custom software.** If custom software is sold to another person other than the original purchaser, the software loses its character as custom software and becomes prewritten computer software as defined in subsection (3) of this section.

(d) **Use of custom software.** Use of custom software is not subject to use tax.

(e) **Example 1.** PFC, Inc., develops software for its client. PFC is not subject to manufacturing B&O tax because the software is custom software. PFC's income from the sale of the custom software to the one specific client is subject to service and other activities B&O tax.

(3) **What is prewritten computer software?** RCW 82.04.215 provides that "prewritten computer software" is computer software, including prewritten upgrades, patches, fixes, etc., that is not designed and developed by the author or other creator to the specifications of a specific purchaser.

The combining of two or more prewritten computer software programs or prewritten portions thereof does not result in custom software. Configuration of prewritten computer software to work with other computer software does constitute customization of prewritten computer software.

Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser.

Where a person, who is not the author or creator, modifies or enhances prewritten computer software, that person is deemed to be the author or creator only of the modifications or enhancements made. Prewritten computer software, or a portion thereof, that is modified or enhanced to any degree, remains prewritten computer software, even though the modification or enhancement is designed and developed to the specifications of a specific purchaser. Where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement will not be considered prewritten computer software.

(a) **Wholesale sales of prewritten computer software.** Gross proceeds from sales of prewritten computer software to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the wholesale nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. To verify the wholesale nature of the sale, the seller obtains a reseller permit from the buyer as provided by WAC 458-20-102 (Reseller permits).

(i) **Distinction between wholesale sales of prewritten computer software and royalties received for the licensing of prewritten computer software.** Sales of prewritten computer software constitute wholesale sales if the reseller, who has no right to reproduce the software for further sales, sells the same software to its customers. The true object of the sale to the reseller is the sale of the software. On the other hand, income received for granting an intangible right to reproduce and distribute copies of prewritten computer software for sale constitutes royalties. The true object of the transaction that generates royalty income is the right to reproduce and license the software. See subsection (8) of this section for more information on royalties.

(ii) **Examples.** The examples presume sellers have nexus with Washington.

(A) **Example 2.** UM Computers, Inc., develops engineering software. UM sells the prewritten computer software at wholesale to OX Computers, Inc., in shrink-wrapped pack-

ages. UM delivers the software to OX. OX then resells the software to customers in the same shrink-wrapped packages. Sales of prewritten computer software by UM are subject to wholesaling B&O tax. Sales by OX to consumers are retail sales subject to retailing B&O tax and retail sales tax.

(B) **Example 3.** GB Computers, Inc., develops engineering software. GB grants SE Computers, Inc., the right to reproduce and distribute copies of the prewritten computer software for sale to end users. GB retains all of its ownership rights to the software and delivers one copy of the software to SE to reproduce and sell. Amounts received by GB from SE for granting the right to reproduce and distribute prewritten computer software are subject to royalties B&O tax. Sales by SE to consumers are retail sales subject to retailing B&O tax and retail sales tax.

(C) **Example 4.** DH Computers, Inc., develops engineering software. DH grants to WK Computers, Inc., the right to copy and redistribute its prewritten computer software. DH delivers the software electronically to WK. WK then sells the software to its customers, who download a copy of the software from WK. Income to DH from WK is subject to royalties B&O tax. Sales of prewritten computer software by WK to its customers are retail sales subject to retail sales tax.

(D) **Example 5.** AJ Soft, Inc., is a software developer of architectural drafting software. AJ Soft enters into an agreement with DJ Sales, Inc., to sell AJ Soft's drafting software. DJ Sales must pay a fee for each copy DJ Sales sells through its web site. AJ Soft does not allow DJ Sales to reproduce the drafting software. Customers download the software, but are unaware the software is downloaded directly from AJ Soft. AJ Soft is making a wholesale sale of software to DJ Sales subject to wholesaling B&O tax. DJ Sales is making a retail sale to its Washington customers subject to retail sales tax.

(E) **Example 6.** Same facts as Example 5, however, instead of customers downloading the prewritten software, DJ Sales' customers access the prewritten software remotely on AJ Soft's servers. AJ Soft is still making a wholesale sale of remotely accessed software to DJ Sales subject to wholesaling B&O tax. DJ Sales is making a retail sale of remotely accessed software to its Washington customers subject to retail sales tax.

(b) **Retail sales of prewritten computer software.** Gross proceeds of sales of prewritten computer software to consumers are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the retail nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

(c) **Use of prewritten computer software.** Prewritten computer software, regardless of the method of delivery, is generally subject to use tax upon use in this state if Washing-

ton retail sales tax was not previously paid. However, use of prewritten computer software is not taxable, if it is provided free of charge, or if it is provided for temporary use in viewing information, or both. RCW 82.12.020. This exception from use tax is limited to prewritten computer software provided free of charge or for temporary use in viewing information, such as free promotional software, donated software, free download of software, and software provided in beta testing to a third-party free of charge.

For purposes of this use tax exception, "beta testing" means the last stage of testing for prewritten computer software prior to its commercial release including the release to manufacturing (RTM). Beta testing may involve sending the software to a third party for the use of the third party. Beta testing is often preceded by a round of testing called alpha testing.

(i) **Example 7.** DS Computers, Inc., is a software developer. In order to perform beta testing of its new accounting software prior to commercial release, DS sends a copy of the software free of charge to KG Technologies, Inc. DS is not subject to use tax for the release of the beta software to KG. KG is not subject to use tax for the use of beta software free of charge.

(ii) **Example 8.** DH, Inc., provides free card games on-line to its customers. The customers, however, must download DH's free software in order to be able to play card games on-line at DH's web site. Wendy downloads the software free of charge. Wendy is not subject to use tax for the use of the software.

(iii) **Example 9.** DW, Inc., provides free software to the public for anyone to watch videos on-line. Roger downloads the software free of charge. Roger is not subject to use tax for the use of the software.

(d) **Manufacturing of prewritten computer software.** Persons engaged in manufacturing prewritten computer software on tangible storage media are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of prewritten computer software who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC. Income from the sale of prewritten software electronically delivered or transferred is not subject to manufacturing B&O tax.

(e) **Duplication of prewritten computer software.** Duplication of prewritten computer software on tangible media for sales to or use by more than one person is subject to manufacturing B&O tax upon the value of products which includes both the value of the tangible media and the software. Duplication of prewritten computer software on tangible media outside this state is not subject to manufacturing B&O tax regardless of where software development takes place.

Duplication of prewritten computer software is a manufacturing activity only if the prewritten computer software is

delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120.

When a software developer contracts with a third party to duplicate prewritten computer software, the parties must take into account the value of all tangible and intangible materials or ingredients, including the software code, when determining the relative value of all materials or ingredients furnished by each party. If the third party furnishes less than twenty percent of the total value of all materials or ingredients that become a part of the produced product, then the third party is presumed to be a processor for hire and the software developer is presumed to be a manufacturer. See WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information.

(4) **Site license of prewritten computer software.** A site license provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

(a) **Retail sales of a site license.** Gross proceeds of sales of a site license to a consumer are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the consumer, and regardless of any express or implied restrictions upon the consumer. Delivery occurs when and where the prewritten computer software subject to the site license is received by the consumer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. See RCW 82.32.730 for more information on sourcing prewritten computer software. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the consumer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

If the prewritten software is hosted by the licensor or a third party for remote access by the licensee, then see subsection (10) of this section.

(b) **Duplication of prewritten computer software by a person under a site license.** A seller of a site license is subject to manufacturing B&O tax for its own duplication of prewritten computer software. Duplication of prewritten computer software is subject to manufacturing B&O tax only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120. Purchaser of a site license is not subject to manufacturing B&O tax for the duplication of prewritten computer software for its own use, pursuant to a site license agreement with the seller.

(c) **Use of a site license partly in this state and partly outside this state.** The part of the site license used by the person in this state is subject to use tax, provided Washington state sales tax was not previously paid. For example, a person purchases and takes delivery of a site license in California. Pursuant to the multiple site license agreement, this person is licensed to use one thousand copies of prewritten com-

puter software, of which four hundred copies will be used in Washington. Use tax is due on the four hundred copies of prewritten computer software used in this state. If the prewritten software purchased by the licensee is delivered in Washington, then the entire charge for the site license is subject to retail sales tax if purchased from a seller responsible for collecting Washington's sales tax. However, a purchaser can issue a multiple points of use exemption certificate under certain circumstances to minimize Washington tax as discussed below in subsection (11) of this section.

**(d) Sales and use of additional copies of prewritten computer software under the same site license.** In some cases, the buyer of a site license may subsequently purchase additional copies of prewritten computer software under the same site license agreement. The seller may or may not deliver any additional copy of the software to the buyer, because the original copy of the software has already been delivered.

**(i) Retail sales of additional copies of prewritten computer software under the same site license.** Retail sales of the additional copies of software occurs when and where the seller delivers any additional copy of prewritten computer software to the buyer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. If the seller does not deliver any additional copy of the software to the buyer, then the sales occur when the sales agreements are made to purchase the additional copies and where the original copy or copies of prewritten computer software was delivered. If the original sale of the site license was subject to manufacturing B&O tax, then the sale of additional licenses are also subject to manufacturing B&O tax.

Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

**(ii) Use of additional copies of prewritten computer software under the same site license.** Where the use of the additional copies of software is partly in this state and partly outside this state and was not previously subject to Washington sales tax, the part of the additional copies of software used by the person in this state is subject to use tax.

**(e) Examples.**

**(i) Example 10.** DEF Computers, Inc., is located in Washington and sells in this state, at retail, a multiple site license of its prewritten computer software to P's Design, Inc. A copy of the prewritten computer software is electronically delivered to P's Design in Washington. P's Design then electronically duplicates the software and distributes the software in Washington and several other states for its use. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software unless P's Design provides DEF with a multiple points of use exemption certificate as discussed in subsection (11) of this section.

**(ii) Example 11.** Same facts as Example 10, except that in addition, DEF delivers a backup copy of the software to P's Design outside Washington. The backup copy of the software is for disaster recovery purposes and is not downloaded to any of P's Design's computers for use. There is no separate

charge for the delivery of the backup software. The software manuals are mailed to P's Design in Washington. DEF is still subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software unless P's Design provides DEF with a multiple points of use exemption certificate as discussed in subsection (11) of this section. Delivery of the software manuals and the backup copy of the software are not relevant in determining when and where the sale takes place. This transaction is not subject to manufacturing B&O tax.

**(iii) Example 12.** Same facts as Example 10 of this subsection, except that in addition, P's Design subsequently purchases 50 additional copies of the software from DEF under the same site license agreement. P's Design merges with another company, and the additional copies are needed for the use of its new employees. No additional copy of the software is delivered to P's Design in fulfilling this new agreement. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the subsequent sale of the 50 additional copies of software because the original copy of the software was delivered in Washington unless P's Design provides DEF with a multiple points of use exemption certificate as discussed in subsection (11) of this section. However, if the original sale of the license had included delivery of the prewritten software by a tangible storage device (and was therefore subject to manufacturing B&O tax), then the licensor is also subject to manufacturing B&O tax based on the value of the additional licenses.

**(iv) Example 13.** GH Computers, Inc., sells at retail a multiple site license of its prewritten computer software to Quick, Inc. GH is located outside Washington, while Quick is located in Washington, other states and other countries. The desktop software is licensed on an unlimited basis, which means that there are no restrictions of its use by Quick. The software is delivered to Quick outside Washington. Quick then electronically duplicates the software and distributes the software to all of its 500 employees, of which 100 employees are located in Washington. The software is electronically downloaded into the desktop computers of all employees and is immediately put into use. Use tax is due on the value of the 100 copies of prewritten computer software used in Washington.

**(v) Example 14.** Same facts as Example 13 of this subsection, except that under the original site license agreement, Quick is entitled to reproduce, distribute, and use up to 500 copies of the desktop software. Then Quick merges with another company, and additional copies are needed for the use of its new employees. Quick, therefore, subsequently purchases 100 additional copies of the software from GH under the same site license agreement. No additional copy of the software is delivered to Quick in fulfilling this new agreement. Quick distributes the additional copies of the software to its 100 new employees, of which 50 employees are located in Washington. Use tax is due on the value of the 50 additional copies of prewritten computer software used in Washington.

**(5) Key to activate computer software.** A key, or an enabling or activating code, may be required in some instances to activate computer software and put the software

into use, and the key may be delivered to a purchaser after the software is already delivered and in possession of the same purchaser. In such instances, the sale of computer software occurs when both the key and the software are delivered to the purchaser. The sale takes place where the software is received by the purchaser in accordance with RCW 82.32.-730. However, if the place of receipt for the software is unavailable to the vendor because the software was delivered by a third party, then the sale takes place where the key is received in accordance with RCW 82.32.730. There is no separate sale of the key from the software, regardless of how such sale may be characterized by the vendor or by the purchaser.

See subsection (4) of this section for more information if a site license of prewritten computer software is involved. If the sale of the prewritten software is subject to manufacturing B&O tax, then the sale of the key required by that prewritten software is also subject to manufacturing B&O tax. The income from the sale of a key is part of a sale of prewritten computer software, whether the sales transactions are together or separate.

(a) **Example 15.** JKL Computers, Inc., an in-state business, sells at retail prewritten computer software to Rebecca. JKL delivers the software to Rebecca in this state. The prewritten computer software, however, cannot be activated without a key. JKL subsequently delivers the key in this state to Rebecca for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from Rebecca on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to Rebecca. There is no separate sale of the key, regardless of the fact that JKL delivers the key to Rebecca for a separate charge.

(b) **Example 16.** Same facts as Example 15 of this subsection, except that JKL subsequently delivers the key outside this state to Rebecca for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from Rebecca on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to Rebecca. There is no separate sale of the key, regardless of the fact that JKL delivers the key to Rebecca for a separate charge.

(c) **Example 17.** MNO Computers, Inc., is an in-state software developer. TKO Computers, Inc., an out-of-state original equipment manufacturer of computers (OEM), agrees in contract with MNO to distribute MNO's prewritten computer software on its computers. TKO delivers MNO's inoperable software to Sally as part of the sale of the computer system. Sally, however, must purchase a key directly from MNO in order to activate and use the software. MNO has no knowledge of where the software was initially delivered to Sally, but MNO knows that the key is delivered to Sally in this state. MNO is subject to retailing B&O tax, and it must collect retail sales tax from Sally on the entire sale of the key and the inoperable software. The entire sale takes place in this state because the key is delivered in this state and MNO has no knowledge of where the inoperable software was initially delivered by TKO.

(6) **Client access license and server license for the server software.** A server license, paid for at the time the server software is purchased, grants the buyer the right to install the server software on the buyer's server. A client access license (CAL) grants the buyer the right to access the server software.

Charges for server licenses and CAL are a part of the sale of the server software, even if the charges are separately stated. The sales take place where the server software is delivered to the buyer.

In cases where server software is delivered to the buyer and used in multiple locations, see subsection (4) of this section on site licenses for more information.

(a) **Example 18.** ZZ Computers, Inc., an in-state business, sells at retail server software to Jack. ZZ delivers the server software to Jack in Washington. ZZ also provides Jack with client access licenses for free allowing Jack the right to access the server software from his personal computers. The sale of server software to Jack is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack for the same sale.

(b) **Example 19.** Same facts as Example 18 of this subsection, except that ZZ makes two separate sales at retail of two types of prewritten computer software to Jack. One is server software, and the other is client software (which is different from client access licenses). ZZ delivers the server software to Jack in Washington where Jack's server is located. ZZ delivers the client software to Jack outside Washington where all of Jack's personal computers are located. Only the sale of server software to Jack is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack for the same sale. Jack may use a multiple points of use exemption certificate for the server software.

(7) **Other activities associated with computer software.**

(a) **Customizing prewritten computer software.** Gross income received for customizing prewritten computer software is subject to service and other activities B&O tax. RCW 82.04.29001.

(i) **What is customizing prewritten computer software?** RCW 82.04.215 provides that "customization of prewritten computer software" is any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person.

"Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(ii) **One nonitemized price for prewritten computer software, customization, and routine installation.** If prewritten computer software, customization of prewritten computer software, and routine installation are sold for a one nonitemized price, the entire charge is considered to be subject to retail sales tax. See (a)(iv) of this subsection for more information on routine installation.

(iii) **Separately stated charge for customization of prewritten computer software.** Where there is a reasonable separately stated charge on an invoice or other statement of

the price given to the purchaser for customization of prewritten computer software (including installation that is not routine, see (a)(i) of this subsection), such customization is subject to service and other activities B&O tax. If a charge for customization of prewritten computer software is not separately stated from a sale of prewritten computer software, the entire charge is considered a retail sale subject to retail sales tax.

(iv) **Customization of prewritten computer software versus routine installation.** Customization of prewritten computer software includes custom installations but does not include routine installation. "Routine installation" means the process of loading program files and installation files onto a computer. Routine installation includes the process of "clicking through" dialog boxes to install prewritten software. Routine installation does not require any specialized knowledge or skills. Custom installation generally requires programming by a programmer to integrate customized elements of prewritten computer software.

(v) **Separately stated charge for routine installation from customization of prewritten computer software.** Where there is a separately stated charge on an invoice or other statement of the price given to the purchaser for routine installation from customization of prewritten computer software, routine installation is subject to retailing B&O tax and retail sales tax. If a charge for routine installation is not separately stated from customization of prewritten computer software and is de minimus the transaction would not be subject to retail sales tax, but instead subject to service and other activities B&O tax.

(vi) **Examples.**

(A) **Example 20.** Tee, Inc., needs financial modeling software that can tie into its existing computer systems. Because of its unique business, however, Tee needs the industry-wide computer software offered by PQR Computers, Inc., to be modified to meet the needs of Tee. Both Tee and PQR are in-state corporations, and the software is delivered in this state. PQR provides a separately stated charge to Tee for customization of prewritten computer software performed in this state that is supported by the terms of the sales agreement. PQR is subject to retailing B&O tax, and it must collect retail sales tax from Tee for the sale of prewritten computer software in Washington. PQR, in addition, is subject to service and other activities B&O tax for the customization of prewritten computer software in Washington.

(B) **Example 21.** Same facts as Example 20 of this subsection, except that, in addition, PQR provides a separately stated charge to Tee for routine installation of prewritten computer software in this state. This charge represents installation of only the prewritten portion of the software. In addition to the tax treatments in Example 20 of this subsection, PQR is subject to retailing B&O tax and it must collect retail sales tax from Tee for the routine installation in Washington.

(b) **Installing or uninstalling computer software.**

(i) Gross income received from installing or uninstalling custom software is subject to service and other activities B&O tax.

(ii) Gross proceeds of sales for routine installation of prewritten computer software are subject to retailing B&O tax and retail sales tax. See (a)(iv) of this subsection for more

information on routine installation. Routine installation of prewritten computer software includes charges for labor and services in respect to the installation, such as travel costs for the routine installation of the software. As of July 1, 2008, if the routine installation occurs through remote access by someone outside the state of Washington, then the installation is sourced pursuant to RCW 82.32.730.

**Example 22.** XYZ Computers, Inc., is hired by Dan for routine installation of prewritten software onto Dan's computers. XYZ's out-of-state employee remotely accesses Dan's computers in Washington to install the prewritten software on his computers. If XYZ has nexus with Washington, then it must collect and remit the sales tax. If XYZ does not have nexus, then Dan must pay use tax.

Gross proceeds of sales from uninstalling prewritten computer software are subject to retailing B&O tax and retail sales tax.

**Example 23.** XYZ Computers, Inc., is hired by Dan to remove prewritten computer software from his computers. Removal of the prewritten computer software requires uninstalling the software from the computer. XYZ sends an employee to Dan's location to remove the software from his computers. Charges for removal of the prewritten computer software are subject to retailing B&O tax and retail sales tax.

(c) **Repairing, altering, or modifying computer software.** Repair of prewritten computer software for more than one person may be distributed as a fix or patch by tangible storage media or electronically in the nature of software upgrades and updates. The sale of prewritten computer software upgrades and updates is a sale of prewritten computer software subject to retailing B&O tax and retail sales tax.

Alteration or modification of prewritten computer software performed for a specific person is subject to the service and other activities B&O tax. Such alteration or modification of prewritten computer software for a specific person constitutes customization of prewritten computer software. See RCW 82.04.215.

(i) **Example 24.** STU Computers, Inc., a Washington company, is hired by Betty to perform repairs (using primarily human effort) via remote access on her prewritten computer software in Washington. STU is performing alteration or modification of prewritten computer software for a specific person and is subject to service and other activities B&O tax.

(ii) **Example 25.** VW Computers, Inc., an out-of-state service provider, is hired by Clyde to perform alterations or modifications (using primarily human effort) via remote access on his prewritten computer software located in this state. VW's facility is located outside this state. VW may be subject to service and other activities B&O tax if it has nexus with Washington.

(d) **Maintaining computer software.** Computer software maintenance agreements typically include, but are not limited to, support activities such as telephone consulting, help desk services, remote diagnostic services, and software upgrades and updates.

(i) Tax treatment of computer software maintenance agreements in general. Sales of stand-alone computer software maintenance agreements that include telephone consulting, help desk services, remote diagnostic services, and other

professional services only, are taxable under the service and other activities B&O tax. However, if the services are part of a sale of an extended warranty on or after July 1, 2005, then the sale is subject to retailing B&O tax and retail sales tax. See WAC 458-20-257 (Warranties and maintenance agreements) for information about extended warranties.

Stand-alone sales of updates or upgrades to prewritten computer software are retail sales of tangible personal property subject to retailing B&O tax and retail sales tax.

(ii) **Prewritten computer software maintenance agreement with mixed elements.** The sale of a prewritten computer software maintenance agreement for a single non-itemized price that includes professional service components such as telephone consulting and retail components such as upgrades and updates of prewritten computer software is generally considered a retail sale subject to retailing B&O tax and retail sales tax unless charges for the upgrades and updates are de minimis.

In cases where the charges for the professional service component(s) and the retail component(s) are separately stated within a prewritten computer software maintenance agreement and invoice, then each activity is taxed according to the nature of the activity.

(iii) **Duplication of prewritten computer software upgrades and updates.** Duplication of prewritten computer software upgrades and updates is subject to manufacturing B&O tax upon the value of products, if the software upgrades and updates are delivered by means of tangible storage media which is retained by the purchaser. This is the case regardless of any maintenance agreement with mixed elements involved. The measure of tax is presumed to be the contract price of the maintenance agreement, unless the person can prove otherwise. See WAC 458-20-112 (Value of products) for more information.

If the software upgrades and updates are delivered from the seller by means other than tangible storage media which is retained by the purchaser, then the software upgrades and updates are not subject to manufacturing B&O tax.

(iv) **Maintenance agreement on custom software and customized elements of prewritten computer software.** Sales of maintenance or support services relating to custom software or the customized elements of prewritten computer software are subject to the service and other activities B&O tax. Such services, including upgrades and updates, are rendered in respect to the custom or customized software and take on the underlying character and taxability of the custom or customized software.

(v) **Examples.**

(A) **Example 26.** On December 15, 2005, CBA Computers, Inc., sells at retail a prewritten computer software maintenance agreement to Frank for his prewritten software. The software maintenance agreement includes an extended warranty for the software, software upgrades and updates, and telephone consulting services for a single nonitemized price. The consulting services are not offered exclusively in connection with the software, nor are they essential to use of the software. CBA delivers the software upgrades and updates electronically. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the sale of the mixed agreement.

(B) **Example 27.** Same facts as Example 26 of this subsection, except that CBA delivers the software upgrades and updates on compact disks. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the sale of the mixed agreement. In addition, CBA is subject to manufacturing B&O tax on duplication of software upgrades and updates. The measure of tax is presumed to be the contract price of the maintenance agreement, unless CBA can prove otherwise.

(C) **Example 28.** Same facts as Example 26 of this subsection, except that CBA provides a separately stated charge for each component of the maintenance agreement. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the charges on prewritten software upgrades and updates and on the extended warranty purchased after July 1, 2005. CBA is subject to service and other activities B&O tax for the charge on telephone consulting services.

(D) **Example 29.** FED Computers, Inc., sells at retail a computer software maintenance agreement to Greta for her software. The maintenance agreement covers only software upgrades and updates. Greta's software is prewritten computer software with customized elements. FED provides the maintenance services to Greta at one nonitemized charge. FED is subject to retailing B&O tax, and it must collect retail sales tax from Greta for the sale of the entire maintenance agreement of the prewritten computer software.

(E) **Example 30.** Same facts as Example 29 of this subsection, except that FED provides a separately stated charge for maintaining the customized elements. FED is subject to service and other activities B&O tax on the charges for maintaining the customized elements. FED is subject to retailing B&O tax, and it must collect retail sales tax from Greta for the charge on maintaining prewritten computer software.

(e) **Computer software training.** Gross income received for training on the use of custom software is subject to service and other activities B&O tax. Gross income received for training on the use of prewritten computer software is subject to service and other activities B&O tax, if the charge for such training is separately stated from the sale of prewritten computer software. If the charge for software training is not separately stated from the sale of prewritten computer software and the prewritten software value is more than de minimis, the entire charge is considered to be a retail sale subject to retailing B&O tax and retail sales tax.

(8) **Licensing computer software - Royalties.** Income received from charges in the nature of royalties for the licensing of computer software is taxable under the royalties B&O tax classification.

(a) **What are royalties?** RCW 82.04.2907 provides that "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. The true object of a transaction involving royalties is to grant an intangible right to reproduce and distribute copies of computer software for sale. It does not, however, include compensation for the licensing of prewritten computer software to the end user. The manner in which computer software is sold (e.g., volume of transactions, subscription license, term license, or perpetual license) or the manner in which payment amount is deter-

mined (e.g., fixed fee per copy, percentage of receipts, lump sum, etc.) does not alter the royalty nature of the transaction.

(b) **Royalties versus site license.** Regarding royalties, the true object of the transaction is to grant an intangible right to reproduce and distribute copies of computer software for sale. In contrast, the true object of a site license is the sale to an end user of prewritten computer software for use on its computers. See subsection (4) of this section for more information on site licenses.

(c) **Royalties versus wholesale sales of prewritten computer software.** See subsection (3)(a) of this section for more information.

(d) **Examples.**

(i) **Example 31.** HG Computers, Inc., an original equipment manufacturer (OEM), acquires prewritten computer software from LL Software, Inc., under a license to reproduce and distribute the prewritten computer software as part of a bundled computer hardware and software package HG sells to end users. LL retains all of its ownership rights to the software. The gross income received by LL from granting intangible rights to reproduce and distribute prewritten computer software to HG is subject to royalties B&O tax.

(ii) **Example 32.** Same facts as Example 31 of this subsection, except that, in addition, HG acquires a site license from LL for the purposes of copying and using the prewritten computer software as an end user. LL delivers the software to HG. Amounts received by LL for the sale of a site license are subject to retailing B&O tax and retail sales tax.

(9) **Special use tax exemption for computer hardware and computer software donated to certain schools or colleges.** Use tax does not apply to the use of computer hardware and prewritten software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW. RCW 82.12.0284.

(10) **Sales of remote access to prewritten software.**

(a) **Remote access to prewritten software.** Sales of remote access to prewritten software on the seller's (or a third-party's) servers are subject to retail sales tax, when the sale is sourced to Washington pursuant to RCW 82.32.730.

**Example 33.** BE Software, Inc., a Washington corporation, offers a variety of prewritten software products on-line, but not for download, to its customers for a monthly subscription fee. BE Software must charge Washington customers retail sales tax and is subject to retailing B&O tax for the subscription fees received from its Washington customers.

(b) **Exemptions from retail sales or use tax for remote access software.** The following exemptions only apply to remote access prewritten software, and not other types of prewritten software sold.

(i) **Purchases of prewritten software that will be offered remotely by the purchaser to its own customers is exempt from retail sales tax.** The purchaser of the prewritten software must provide an exemption certificate to the seller in order to receive the exemption. The income from the sale of the prewritten software is subject to retailing B&O tax. RCW 82.04.190 (2)(f).

**Example 34.** BE Software, a Washington company, purchases prewritten software from Joe's Software Developer Co., that BE will provide remotely to its customers. BE provides an exemption certificate to Joe's for the purchase of pre-

written software. Joe's does not collect or remit retail sales tax, but does pay retailing B&O tax on the income from the sale.

(ii) **Made available free to the general public.** Retail sales and use taxes do not apply to the purchase or use by a business or other organization of remote access prewritten software in order to make that remote access prewritten software available free of charge for the use or enjoyment of the general public. Buyers claiming this exemption must provide the seller with a properly completed "Digital Products and Remote Access Software Exemption Certificate" or other exemption certificate acceptable to the department.

(A) **Available for free. In order to qualify, the remote access prewritten software purchased must be made available for free.** In this context, "free" means that the recipient of the remote access prewritten software does not need to provide anything of significant value. If the purchaser requires something of significant value from the recipient in exchange for the remote access prewritten software, it is not given away for free.

(B) **"General public"** means all persons and is not limited or restricted to a particular class of persons, except that the general public includes:

(I) Certain classes of persons defined by their residency or ownership: The general public includes a class of persons residing or owning property within the boundaries of any state (e.g., Washington), political subdivision of a state (e.g., King County), or a municipal corporation (e.g., Seattle).

(II) Library customers. With respect to libraries, the term general public includes authorized library patrons.

(C) **Purchaser must have the legal rights to provide the remote access prewritten software to the general public:** The exemption provided in subsection (3) of this section does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relocate, distribute, redistribute, or exhibit the remote access software, in whole or in part, to the general public.

(11) **Multiple points of use exemptions.**

(a) The retail sales tax does not apply to the sale of prewritten computer software or remote access prewritten software if the buyer provides the seller with an exemption certificate claiming multiple points of use.

(b) If the sale of the remote access software or license to the remote access software is sourced to Washington and the purchaser does not provide an exemption certificate, then the entire charge is subject to retail sales tax.

(i) **Requirements.** A buyer is entitled to use an exemption certificate claiming MPU only if the buyer is a business or other organization and the prewritten software or remote access prewritten software purchased will be concurrently available for use within and outside Washington. A buyer is not entitled to use an exemption certificate claiming MPU for prewritten software purchased for personal use.

(ii) **Concurrently available.** "Concurrently for use within and outside this state" means that employees or other agents of the buyer may use the prewritten software or remote access software simultaneously from one or more locations within this state and one or more locations outside this state.

(iii) **Apportionment (allocation) of use tax.** For purposes of this subsection on MPU, "allocation" and "appor-

tionment" will have the same meaning. A business or other organization subject to use tax on prewritten software or remote access software that is concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. Additionally, the department may authorize or require an alternative method of allocation apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer.

(c) **Records requirement.** No allocation under this section is allowed unless the allocation method is supported by the taxpayer's records kept in the ordinary course of business.

"User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the remotely accessed software purchased in the performance of his or her duties as an employee or other agent of the taxpayer.

#### NEW SECTION

**WAC 458-20-15503 Digital products.** This rule provides a structured approach for determining tax liability for digital products and digital codes. For purposes of this rule, a digital product includes digital goods or digital automated services, which are described in detail below. The sale or use of digital products and digital codes is generally subject to retail sales or use tax unless purchased for resale or some other exemption applies.

This rule is organized into six sections. Each section addresses a question or topic relevant to the determination of whether a person is selling or purchasing a digital product or digital code and, if so, what are the tax consequences that follow from such activity.

1. Are the products or services transferred electronically?
2. Does the product or service meet the general definitions of digital product or digital code?
3. Are there applicable exclusions from the general definitions of the digital product or digital code?
4. Are the sales of the digital product or digital code sourced to Washington?
5. Are there applicable retail sales or use tax exemptions for the purchase or use of the digital product or digital code?
6. Miscellaneous provisions.

Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. Additionally, each fact pattern in each example is self contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. The tax consequences of all situations must be determined after a review of all the facts and circumstances. Examples requiring that sales tax be collected by the seller assume that the seller has "tax nexus" with Washington and is therefore subject to Washington taxes.

#### **Part 1. Are the Products or Services Transferred Electronically?**

(101) **Introduction.** Products or services must be transferred electronically in order to be digital products. If a product is transferred by means of a tangible storage media (e.g.,

compact disc, magnetic tape, hard drive, etc.), it is not a digital product. Digital codes need not be transferred electronically in order to be digital codes, but may be obtained by any means, including tangible storage media.

(102) **Transferred electronically.** Means the purchaser obtains the product by means other than tangible storage media. Generally, this means the product is transferred using the public internet, a private network, or some combination. However, it is not necessary that the product be delivered to the purchaser. As long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser. For example, whether a digital movie is downloaded by the user or streamed by the user, it is considered to be "transferred electronically." Alternatively, the same movie purchased on tangible media (e.g., DVD, etc.) is the purchase of tangible personal property and is not considered to be either the sale of a digital product or transferred electronically.

#### **Part 2. Does the Product or Service Meet the General Definition of Digital Product or Digital Code?**

(201) **Introduction.** The term "digital product" means (1) digital goods and (2) digital automated services. Digital products transferred to an end user are generally subject to retail sales or use tax regardless of whether the purchaser's right of use is permanent, less than permanent (e.g., 24-hour period), or the purchaser is obligated to make continued payments as a condition of the sale (e.g., "subscriptions").

(202) **Digital goods.** Means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, with certain exclusions discussed in Part III of this rule. The term "digital goods" includes within it the specific term "specified digital products" (as required by the Streamline Sales and Use Tax Agreement).

(a) **Specified digital products.** Means electronically transferred digital audio-visual works, digital audio works, and digital books.

(i) **Digital audio works.** These are products that result from the fixation of a series of musical, spoken, or other sounds. Digital audio works include ringtones, recorded or live music, readings of books or other written materials, speeches, and other sound recordings. For example, a music file in MP3 format accessed or downloaded through the internet is a digital audio work.

(1) A "ringtone" is a digitized sound file that is downloaded onto a communication device (e.g., mobile phone) and may be used to alert the user to an incoming communication such as a call or text message.

(2) A ringtone does not include "ring-back tones" or other digital audio files that are not stored on the purchaser's communication device. In other words a ring-back tone is not a "specified digital product." A ring-back tone may be a digital automated service or a digital good depending on the facts. See analysis for digital automated services in subsection (2) below.

(ii) **Digital audio visual works.** These products are a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Digital audio visual works include movies, music videos, videos of live events, and news and entertain-

ment programs. For example, a movie downloaded or accessed via the internet is a digital audio visual work.

(iii) **Digital books.** These are books in a digital format that are generally recognized in the ordinary and usual sense as books. A digital book does not include periodicals, magazines, newspapers, chat rooms, or weblogs. For example, a cookbook in a PDF format downloaded or accessed through the internet is a digital book.

(b) **Other digital goods.** The following list illustrates the types of products that are also digital goods in addition to the subclass of "specified digital products" discussed above. This list is merely illustrative and not exhaustive:

(1) A digital schematic of a lawnmower engine transferred electronically.

(2) A digital car history report transferred electronically.

(3) A digital picture transferred electronically.

(4) Digital periodicals or magazines transferred electronically.

(5) A digital presentation that includes still photos and accompanying audio content transferred electronically.

(c) Digital goods prior to July 26, 2009. The mere accessing or streaming of a digital good was not a retail sale before July 26, 2009, because the customer did not receive possession of the digital good. Instead, accessing or streaming a digital good was subject to the service and other activities business and occupation ("B&O") tax. The sale of a digital good to a customer who downloaded the digital good was a retail sale because the customer received possession of the digital good. See Part VI, subsection (3) for a discussion of tax amnesty for past periods.

(203) **Digital automated services.** Means services transferred electronically that use one or more software applications.

(a) **Digital automated services may include.** One or more software applications either prewritten or custom, as well as components that are similar to stand-alone digital goods. For example, an on-line information service may contain data, facts, or information whose use is facilitated by one or more software applications that provide search capabilities and other functionality. Thus, digital automated services will include software and may include elements similar to stand alone digital goods, which operate together in an integrated fashion to provide an electronically transferred service.

(i) **Distinguishing a digital good from digital automated services.** A digital good is not a service involving one or more software applications. A digital good consists of static images, sounds, data, facts, information or any combination thereof. Clear examples of the static nature of digital goods are digital books, digital music, digital video files, and raw data.

(ii) **Distinguishing remote access software from digital automated services.** Remote access software is solely prewritten software that is made remotely accessible by the vendor from the vendor's server (or other third-party server) for a customer. To the extent that components similar to digital goods and/or additional services or infrastructure are supplied with the prewritten software the sale may be the sale of a digital automated service (see also Part III subsection (2)(h) for an exclusion of remote access software from digital automated services).

(b) **Examples:**

**Example 1. On-line information service.** XYZ provides an on-line service that uses one or more software applications to facilitate the use of news and information with features such as: Research history, natural and boolean searching, chat forums, chart creation, document and word flagging, information organizing folders, etc. In this example software features facilitate the use of the information. XYZ's service is a digital automated service.

**Example 2. On-line data gathering service.** QPR provides a service that uses one or more software applications to "crawl the internet" in order to identify, gather, and categorize digital information according to specified criteria. In this example software facilitates the gathering, identifying and categorizing of information acquired from the internet. The service is a digital automated service.

**Example 3. On-line gaming service.** CFC provides an on-line gaming service that allows subscribers to play a game with other subscribers in a real time multiplayer environment using software accessed via the internet. In this example the gaming software is combined with additional capabilities that enable a real time multiplayer environment that is not otherwise available. The service is a digital automated service. The same software purchased in stores for single player use without the multiplayer on-line environment would be pre-written software.

**Example 4. On-line rental facilitation service.** BFC provides an on-line service that facilitates apartment building management. The on-line service lists and advertises apartment vacancies, screens applicants, routes maintenance requests, and accepts and processes rental payments. In this example the software based service facilitates and automates various administrative functions and coordinates third-party services for apartment renting. The service is a digital automated service.

**Example 5. Marketplace search engine.** Company sells digital music files (i.e., digital goods) on its web site. In order to locate specific digital music files customers may use a free software based search function that is integrated into Company's web site. Customers may also find the digital music file they are seeking by clicking on a series of links to get to the desired music file. Company's software based search function associated with the sale of the digital music file does not transform the sale of the digital music file into a digital automated service. Company is selling a digital good (i.e., music file) and not a digital automated service.

**Example 6. Remotely accessed prewritten software.** Company licenses to users prewritten word processing software that it hosts on its computers. The software includes access to clip-art image files that can be inserted into documents created with the word processing software. Company is selling remotely accessed prewritten software and not a digital automated service or digital goods. The addition of the clip art with the software does not transform the remotely accessed software into a digital automated service or a digital good.

(c) **Digital automated service prior to July 26, 2009.** The sale of a digital automated service to consumers was not a retail sale before July 26, 2009. Generally, income earned

from such sales was subject to B&O tax under the service and other activities classification.

(204) **Digital codes.** These are codes that provide a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same retail sales and use tax treatment. A digital code may be obtained by any means, including e-mail or by tangible media regardless of its designation as song code, video code, book code, or some other term. For example, a soft drink bottle cap has an alphanumeric code that, when entered on-line at the soft drink company's web site, provides the customer with a free digital music file for download. The code is a digital code.

(a) **Products with mixed tax treatment.** Codes that provide the right to obtain one or more products that do not have the same retail sales and use tax treatment are not digital codes.

(b) **Codes that represent a stored monetary value, redeemable cards, gift cards, or gift certificates.** Codes that represent a stored monetary value that is deducted from a total as it is used by the purchaser or that represent a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value, are not digital codes.

**Example 7.** Calvin purchases a code at his local grocery store for use on Joe Seller's (JS) web site. At check out, Calvin tells the grocery store clerk to put \$25.00 in value on the plastic card containing the code. Calvin then goes to JS's web site and inputs the code from the card. The \$25.00 value of the card is stored in Calvin's "account" and can be used on any purchase by Calvin from JS's web site. Calvin then purchases five digital songs for \$5.00 from JS. At check out from JS's web site, \$5.00 is deducted from Calvin's account. When the transaction is complete, Calvin has a \$20.00 balance remaining in his account on JS's web site. Because the code represents a stored monetary value, it is not a digital code.

### Part 3. Are There Applicable Exclusions from the General Definitions of Digital Product and Digital Code?

(301) **Introduction.** For certain products or services transferred electronically that otherwise meet the definition of digital good, digital automated service, or digital code, (as discussed in Part II) there may be a specific exclusion from the applicable definition. If an exclusion applies, then the product or service will generally not be considered a digital good, digital automated service, or digital code for retail sales and use tax purposes. For example, a service that is transferred electronically and that uses one or more software applications will generally be subject to retail sales tax as a digital automated service. However, if the service is performed using primarily human effort (e.g., manual data entry), then an exclusion applies, and the service will not be a digital automated service subject to retail sales tax; however, the service may still be subject to Washington business and occupations tax ("B&O"). An excluded service may also still be subject to retail sales tax under certain circumstances. For example, telecommunications services are excluded from the definition of digital automated services, but remain subject to

retail sales tax under their own separate definition of retail sale.

(302) **Exclusions from the definition of digital good are:**

(a) **Telecommunications and ancillary services** as defined in RCW 82.04.065. These services may be used to distribute digital goods, digital automated services, and digital codes, but are not themselves any of these products.

(b) **Computer software** as defined in RCW 82.04.215 and WAC 458-20-15502. These are coded instructions designed to cause a computer or automatic data processing equipment to perform a task. A digital good may have coded instructions, but a digital good's function is to provide content (e.g., the images, sounds, facts, data, or information).

(c) **The internet and internet access** as defined in RCW 82.04.297. Internet access refers to a service that allows users to connect to the internet as well as obtain certain services that are incidental to the provision of internet access when furnished to users as part of such service (e.g., e-mail or personal electronic storage capacity, which is furnished with access to the internet).

(d) **Professional or personal services** represented in electronic form are not a digital good. This exclusion applies where the service primarily involves the application of human effort by the service provider, and the human effort originated after the customer requested the service. See subsection (2)(a) of this Part III for a discussion of the term "primarily." For example, an electronic engineering report created at the customer's request that reflects an engineer's professional analysis, calculations, and judgment, which is sent to the customer electronically, is considered evidence of a professional service and not a digital good. In contrast, a digital template for a last will and testament that was originally created by an attorney but made accessible to multiple customers on the internet (a "fill-in-the-blank will") is either a digital good or a digital automated service (depending on software functionality) and would not be a representation of a professional service because the fill-in-the-blank will was not created for a specific client.

(i) **Photography.** This exclusion for professional or personal services does not apply to photographers in respect to amounts received for the taking of digital photographs that are transferred electronically to the end user/customer. In this respect a digital photographer's transactions are subject to retail sales tax in a similar manner as other photographer's transactions pursuant to WAC 458-20-140.

(e) **Exclusions listed directly below for digital automated services** are also exclusions from the definition of digital good.

(303) **Exclusions from the definition of digital automated service are:**

(a) **Services that require primarily human effort by the seller** and the human effort originated after the customer requested the service. In this context, "primarily" means greater than fifty percent of the effort to perform the service involved human labor. To determine whether the fifty percent or greater threshold is satisfied, the following factors are considered:

(i) Factors.

(1) **Costs.** The relative costs incurred by the service provider to provide the human labor component and the automated component. If the human labor costs are greater than fifty percent of the total costs to perform the service, this is some evidence that the service requires primarily human effort.

(2) **Time.** The relative time spent on performing human labor and the automated component. If the time spent performing the human labor component involves greater than fifty percent of the total time spent performing the service, this is some evidence that the service requires primarily human effort.

(3) **Revenue.** The extent to which revenue earned may be attributed to human labor or an automated component. If more than fifty percent of the revenue earned is a direct result of the human effort performed, this is some evidence that the service requires primarily human effort.

(ii) **Examples:**

**Example 8.** Company creates web sites for customers. John requests that Company create a custom web site for John's business. Company creates new digital artwork and performs custom programming after John requests the service. Because everything was custom made (e.g., 100%) after John requested the services, this service was performed with greater than 50% human effort. Company's sale to John is excluded from the definition of digital automated service.

**Example 9.** Company has created multiple web site "templates" and sells access to the templates so that customers can create their own web sites. Customers can choose the style and color of their web site by selecting from a series of options contained in check boxes and drop down menus in the templates. Jacob purchases access to the templates and creates his own web site using the template. Company's sale to Jacob is a retail sale because Company did not expend any human effort after Jacob requested the service. Company merely provided Jacob access to its software-driven service. Jacob purchased a digital automated service. The fact that Jacob expended some human effort in completing the web site using the templates is not relevant since this was not human effort expended by Company.

**Example 10.** Company contracts to provide services to Peter that generally fit within the definition of digital automated services. The contract term is for two years and includes essential software integration services. The integration services include custom programming and other human effort that will take place intermittently over a period of one month. The contract price states that the integration activities performed in the first month will cost \$2,000. After the integration services are completed, there will be a monthly service fee of \$2,000 for use of the service during the contract term. Thus, the total cost of the service over the two-year contract term is \$48,000 ((23 months x \$2,000 = \$46,000) + (\$2,000 for integration activities in the first month) = \$48,000). The human effort component of the integration activities is 1 month of the 24-month contract term. Therefore, the human labor time spent performing the service is 1/24, or approximately 4%, of the total contract term. Additionally, the revenue associated with the human labor is \$2,000, of the total contract value of \$48,000. Therefore the revenue associated with the human effort is 2/48, or approxi-

mately 4%, of the total revenue associated with performing the service. Based on these two factors, the service provided by ABC to EFG does not require primarily human effort (i.e., human effort is approximately 4% for both factors) and is therefore not excluded from the definition of digital automated service.

(b) **Loaning or transferring money or the purchase, sale, or transfer of financial instruments.** For purposes of this section, "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options. For example, the electronic transfer of money from a savings account to a checking account, whether done for the customer by a bank teller or by an ATM machine, is excluded from the definition of digital automated service.

(c) **Dispensing cash or other physical items from a machine.** An ATM is not providing a digital automated service when it dispenses cash to users of the ATM.

(d) **Payment processing services,** including services such as electronic credit card processing activities conducted on-line or in physical retail stores via electronic transmission.

(e) **Parimutuel wagering and handicapping contests** as authorized by chapter 67.16 RCW.

(f) **Telecommunications services and ancillary services** as those terms are defined in RCW 82.04.065. For additional information, refer to the discussion above concerning the comparable exclusion from the definition of digital goods (see Part III section (1)(a)).

(g) **The internet and internet access** as those terms are defined in RCW 82.04.065. For additional information, refer to the discussion above concerning the comparable exclusion from the definition of digital goods (see Part III section (1)(c)).

(h) **Remotely accessed prewritten software.** Remotely accessed software provided on a standalone basis is excluded from the definition of digital automated service. However, software that is used in connection with a service that is transferred electronically would generally be included in the definition of a digital automated service.

**Example 11.** Company sells remotely accessed gaming software that is identical in all substantive respects to the same software available in stores for individual use and installation on home computers. Company's sales to consumers would be treated as a sale of prewritten software remotely accessed and therefore is excluded from the definition of digital automated services.

**Example 12.** Same facts as Example 11 except that Company, in addition to selling the remotely accessed software, also sells a monthly subscription service that provides on-line multiplayer capabilities, game rankings, and gaming tournaments. Company is selling a digital automated service. In this case the customers are not merely receiving the individual use of software, but instead an on-line gaming service facilitated by the software. Thus, the monthly subscription service is not excluded from the definition of digital automated service.

(i) **On-line education programs** provided by the following:

(i) Public or private elementary or secondary schools; or

(ii) An institution of higher education as defined in Sections 1001 or 1002 of the federal Higher Education Act of 1965 (Title 20 U.S.C. Sections 1001 and 1002), as existing on July 1, 2009. This would include most colleges and universities. For the purposes of this section, an on-line educational program must be encompassed within the institution's accreditation.

**Example 13.** ABC University, a qualifying institution of higher education under the federal Higher Education Act of 1965, provides an accredited on-line Spanish course for which it charges a quarterly access and use fee to students. The course is remotely accessed by students logging into a web site and accessing a fully interactive program that includes components of video, text, and audio, as well as extensive software code. This service would generally be considered a digital automated service. However, it is specifically excluded from the definition of digital automated service as an on-line educational program.

(j) **Live presentations** such as lectures, seminars, workshops, or courses, where participants are connected to other participants and presenters via the internet or other networks, allowing the participants and the presenters to provide, receive, and discuss information together in real time.

**Example 14.** Company provides an on-line seminar service for Customer. Company provides a panel of live speakers that make a presentation to Customer's employees listening to and viewing the seminar through an internet connection supplied by a third-party service provider. The seminar allows Customer's employees and panelists to ask and answer questions on a real time basis. Company's on-line seminar service is transferred electronically and uses one or more software applications and therefore would generally be considered a digital automated service. However, this type of service allowing live interaction is specifically excluded from the definition of digital automated service.

**Example 15.** Same facts as Example 14 except that Company records the seminar and charges other companies a fee for accessing the seminar from Company's web site. The recorded presentation allows these customers to watch the presentation but it does not allow them to ask questions on a real time basis. Because it was prerecorded there is no live interaction contemporaneous with the live presentation, Company is selling a digital good.

**Example 16.** Company provides on-line training courses to Steve for a fee. The training courses provide key interactive elements such as study guides, knowledge testing, and automated help, all facilitated by one or more software applications. Such courses are not live presentations and do not provide human interaction. Accordingly, Company is selling a digital automated service.

(k) **Travel agent services**, including on-line travel services, and automated systems used by travel agents to book reservations.

(l) **On-line marketplace related activities**, which are services that allow the person receiving the services to make on-line sales of products or services, digital or otherwise, using either:

- (i) The service provider's web site; or
- (ii) The service recipient's web site, but only when the service provider's technology is used either to:

- (1) Create or host the service recipient's web site; or
- (2) Process orders from customers using the service recipient's web site.

**Example 17.** Company provides "electronic marketplace listing" services to sellers wishing to sell their products on the internet. Holcomb contracts with Company to "list and sell" his coffee mugs on Company's web site. Holcomb pays Company a service fee based on a percentage of each sales transaction completed on Company's web site. This on-line marketplace service is excluded from the definition of digital automated services.

**Example 18.** Same facts as Example 17, except now Holcomb decides he no longer wants to be just another seller on Company's web site. Instead, Holcomb wants his own "retailing presence" on the internet so Holcomb contracts with Company to create and host Holcomb's new coffee mug web site ("Holcomb's Wacky World of Coffee"). This is an on-line marketplace service and excluded from the definition of digital automated services.

(iii) **Exclusion limitation.** The services described in this subsection do not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service. For instance, in Example 17, the sale by Holcomb of coffee mugs would still generally be subject to retail sales tax and retailing B&O tax as the sale of tangible personal property.

(m) **Advertising services**, which means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include: Layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include on-line referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of web site traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration.

**Example 19.** Company provides promotional services to customers wishing to market their products using the internet. Amy sells widgets on the internet and hires Company to provide its promotional services. Company consults with Amy on her marketing needs and then creates a marketing plan for her business. Company also creates and distributes on-line banners, links, and targeted e-mail "blasts" that promote Amy's business. All of the services provided by Company are advertising services excluded from the definition of digital automated services.

**Example 20.** Company is paid by Amy for each click on a sponsored link on Company's web sites. The services provided by Company are advertising services excluded from the definition of digital automated services.

(n) **Storage, hosting, and back-up.** The mere storage of digital products, digital codes, computer software, or master copies of software is excluded from the definition of digital automated services. This exclusion includes providing space on a server for web hosting or backing-up data or other information.

**Example 21.** Company charges Rowe a fee for 25 terabytes of storage space under its "basic storage service" offering. Company also charges Rowe an additional and optional fee for security, web filtering, application firewalls, and load balancing under its "premium service" package offering. The "basic storage" services are mere storage services and excluded from the definition of digital automated services. However, the charges for the optional premium services are more than mere storage or hosting services. As such, the premium services are not excluded from the definition of digital automated services.

(o) **Data processing services** means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to: (1) Extract the required information in an appropriate form; or (2) to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include remote access software used by the customer to process their own data.

**Example 22.** Bango Corp, in preparation for litigation, hires Company, to use its automated technology to search Bango's computers and gather documents relevant to the lawsuit. Company's service also provides software tools that allow Bango to categorize, copy, store, and notate the gathered documents. Company's service is not data processing. The services performed primarily involve gathering data, and providing software tools that allow the customer to categorize, copy, store and notate documents in preparation for litigation. Accordingly, Company is selling a digital automated service.

**Example 23.** Company provides check processing services to Wallo Corp, a bank operating in Washington. Company accepts scanned checks provided by Wallo and then uses its software and technology to extract the check dollar amount, account number, and verify the check has been signed. Company then provides this extracted and reformatted data back to Wallo allowing it to reconcile its customer's accounts. Company provides data processing services which are excluded from the definition of digital automated services.

**Example 24.** Same facts as Example 23, except that Company accepts checks provided directly by Wallo's customers. Thus, check images come from both Wallo and Wallo's customers. The services provided by Company are still data processing services excluded from the definition of digital automated services even though the data does not come exclusively from Wallo.

#### **Part 4. Are the Sales of the Digital Product or Digital Code Sourced to Washington?**

(401) **Introduction.** Once it is determined that a transaction involves the sale of a digital product or digital code, the sale must be sourced to Washington in order to be subject to Washington's retail sales taxes and retailing B&O tax. Sales of digital products are sourced using the same statute

that applies to other retail sales, RCW 82.32.730 as outlined below.

##### **(402) Sourcing retail sales.**

(a) **Business location.** When a digital product or digital code is received by the buyer at a business location of the seller, the sale is sourced to that business location.

**Example 25.** Frank goes to BigBox brick-and-mortar store in Washington and purchases a music file from an electronic kiosk in the store that connects to BigBox's web site using the internet and a computer. Frank purchases and downloads the music file inside BigBox's store by connecting his digital music player to the kiosk in the store. The sale of the music file is sourced to BigBox's store location in Washington.

(b) **Place of receipt.** If the first sourcing rule explained above in (1) of this subsection does not apply, the sale is sourced to the location where receipt takes place.

(i) The digital product or digital code may be received by the buyer at the buyer's location or by the buyer's donee (e.g., a gift recipient) at the donee's location.

(ii) In the context of digital products and digital codes, "receive" and "receipt" means: (i) Making first use of digital automated services; or (ii) taking possession or making first use of digital goods or digital codes, whichever comes first.

**Example 26.** Drogba Inc., located in Olympia, Washington, purchases a digital automated service from Company. Drogba's employees access and make first use of the service at their workstations located in Olympia. Company knows that the digital automated service is received in Olympia, and therefore will source the sale of the digital automated service to that location.

(c) **Address in records.** If the first two sourcing rules explained above in (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer that is available from the seller's business records maintained in the ordinary course of business, so long as use of this address does not constitute bad faith. For example, any address of the buyer held by the seller that reasonably estimates the receipt location will be sufficient, including an address contained in a relevant service contract, or an address used for accounts receivable purpose.

**Example 27.** Nani Corp, located in Olympia, Washington, purchases a digital automated service from Company. The purchase contract between Nani and Company provides that Nani may have 5 users access the digital automated service from any of Nani's multiple locations. In this case, Company does not know where the digital automated service is received. However, Company has Nani's Olympia address in its business records and will therefore source the sales to Nani's Olympia address.

(d) **Address obtained during sale.** If the first three sourcing rules explained above in (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer obtained during the consummation of the sale. For example, an address obtained during consummation of the sale would include the address of a buyer's payment instrument (e.g., billing address for a credit card), if no other address is available, so long as use of this address does not constitute bad faith.

(i) **Internet protocol (IP) address.** The buyer's IP address is acceptable location information obtained at the time of sale if an address cannot otherwise be obtained during consummation of the sale.

(e) **Origin.** If the first four sourcing rules explained above in (1), (2), (3), or (4) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the sale must be sourced to the location determined by the address from which the digital good or digital code was first available for transmission by the seller, or from which the digital automated service was provided. Any location that merely provided the digital transfer of the product sold shall be disregarded.

(403) **Sourcing for use tax purposes.** The sales sourcing rules above in section IV are for sourcing sales subject to retail sales tax under RCW 82.08.020 and RCW 82.32.730. What follows below is a discussion of use tax reporting obligations with respect to digital goods, digital automated services, and digital codes. Generally, use tax applies to the use of a digital product or digital code in Washington if retail sales tax has not already been paid and no exemption otherwise applies.

(a) **Digital good or digital code.** "Use" means the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code.

(b) **Digital automated service.** "Use" means the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service.

**Example 28.** Company, located in New York, sells a digital automated service to Lampard Inc., located in Washington. Lampard has employees in Washington who use the internet to access Company's services using an internet web browser. Company does not have nexus with Washington and is not required to charge and collect retail sales tax on the sale of its service to Lampard. Lampard has a use tax reporting obligation because it uses, enjoys, or otherwise receives the benefit of Company's service at its location in Washington.

#### **Part 5. Are there Applicable Retail Sales or Use Tax Exemptions for the Purchase or Use of the Digital Product or Digital Code?**

(501) **Introduction.** After determining that a digital product or digital code has been sold or used and the sale or use is sourced to Washington, exemptions from retail sales or use tax should be examined. What follows is not an exhaustive list of exemptions but instead an explanation of the most common exemptions for digital products. Some exemptions may apply only with respect to certain digital products (e.g., some exemptions apply only to digital goods, not digital automated services). Exemptions may also require an exemption certificate or reseller permit.

(502) **Resale.** The purchase of a digital product or digital code for resale with no intervening use is not subject to retail sales or use tax. Sellers should obtain from buyers a copy of the buyer's reseller permit, a properly completed "Digital Products and Remote Access Software Exemption

Certificate," or otherwise comply with RCW 82.04.470 to substantiate the wholesale nature of the sale. See RCW 82.32.780.

(503) **Component of a new product.** Generally, persons who purchase, acquire, own, hold, or use any digital product or digital code for purposes of incorporating it into a new product for sale will not be subject to retail sales tax on such a purchase. The digital product or digital code must become a component of the new product for sale. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product.

(a) **Product.** For purposes of this subsection, "product" means a digital product, an article of tangible personal property, or the service of providing consumers with the right to access prewritten computer software (which is defined as a retail sale). For example, an industrial drill manufacturer and seller combines hardware, software, and data to create a new product, a "smart drill." Software embedded in the drill uses the variance data (also embedded in the drill) to control the hardware during drill operations. The data is a digital good purchased for use as a component of a new product for sale (i.e., the drill). Sellers should obtain from buyers a copy of the buyer's reseller permit, a properly completed "Digital Products and Remote Access Software Exemption Certificate," or otherwise comply with RCW 82.04.470 to substantiate the wholesale nature of the sale.

(504) **Made available free to the general public.** Retail sales and use tax does not apply to the purchase or use by a business or other organization of a digital product (including a digital product acquired through the use of a digital code) in order to make that digital product (1) available free of charge for the use or enjoyment of (2) the general public. Buyers claiming this exemption must provide the seller with a properly completed "Digital Products and Remote Access Software Exemption Certificate" or other exemption certificate acceptable to the department.

(a) **Available for free.** In order to qualify, the digital product purchased must be made available for free. In this context, "free" means that the recipient of the digital product does not need to provide anything of significant value. If the purchaser requires something of significant value from the recipient in exchange for the digital product, it is not given away for free.

**Example 29.** Mauro purchases 1,000 digital audio files from Company to be used for a "give away" to the first 1,000 people to visit Mauro's web site as part of a marketing campaign conducted by Mauro. When people visit Mauro's web site they are required to fill out a marketing survey before they may receive the free digital audio file. The information gathered from the marketing surveys is then sold to a marketing company by Mauro. Thus, Mauro has required that recipients provide something of significant value in exchange for the digital audio file. This is not a "free" transaction and therefore, Mauro's purchase of the digital audio from ABC does not qualify for the exemption. (Compare Example 31.)

(b) **"General public"** means all persons and is not limited or restricted to a particular class of persons, except that the general public includes:

(i) **Certain classes of persons defined by their residency or ownership.** The general public includes a class of persons residing or owning property within the boundaries of any state (e.g., Washington), political subdivision of a state (e.g., King County), or a municipal corporation (e.g., Seattle).

**Example 30.** The City of Evergreen (a municipal corporation) makes satellite images of land parcels available for free only to persons residing in Evergreen. Residents are required to enter their zip code prior to accessing the images and certify that they are a resident of the City. Accordingly, the City of Evergreen can purchase the satellite images exempt from retail sales and use tax.

(ii) **Library customers.** With respect to libraries, the term general public includes authorized library patrons.

(c) **Buyer must have the legal rights to provide the digital product to the general public.** The exemption provided in this subsection (3) does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the digital product, in whole or in part, to the general public.

**Example 31.** Same facts as Example 29, except this time people visiting Mauro's web site are provided free access to the digital audio files for download and no survey information is required in exchange as in Example 29. Additionally, Mauro purchased the digital audio files from Company with the right to redistribute them to the general public. Accordingly, Mauro's purchase from Company qualifies for the exemption because he has made the digital audio files available free of charge to the general public pursuant to a contract that gives him rights of redistribution. Mauro only purchased 1,000 files and therefore must limit the distribution to the first 1,000 people. Most "give aways" will have similar quantity limitations but this fact alone will not disqualify such transactions under the "general public" requirement.

**(505) Purchased solely for business purpose.**

(a) **Introduction.** Retail sales and use tax does not apply to the sale to or use by a business of digital goods (and services rendered in respect to those digital goods), where the digital goods and services rendered in respect to digital goods are purchased solely for business purposes. This exemption only applies to purchases of digital goods and does not apply to the purchase of digital automated services, prewritten software, or remote access software.

(b) **Digital codes.** This exemption also applies to the sale to or use by a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes. If the digital code purchased by a business for a business purpose provides access to both digital goods and digital automated services, the purchase of the digital code does not qualify for this exemption.

(c) **"Business purposes"** means the digital good is relevant to the buyer's business needs.

(d) **Government entities.** This exemption does not apply to the purchase for personal or household purposes or for any activity conducted by a governmental entity.

(e) **Prior periods.** For the period July 26, 2009, through June 30, 2010, the "business purpose" exemption applied

only to "standard digital information." Standard digital information is a subset of digital goods.

(i) **Standard digital information** is a digital good that consists primarily of data, facts, and/or information that is not generated or compiled for a specific client or customer. Standard digital information does not include a digital good that is comprised primarily of sounds or images.

(506) **Multiple points of use.** Retail sales tax does not apply to the sale of digital products or digital codes purchased for use concurrently available for use within and outside this state. Note that Washington use tax still applies to the use of the digital product or digital code used in Washington.

(a) **Requirements.** A buyer is entitled to claim MPU exemption only if:

(i) The buyer is a business or other organization.

(ii) The digital product purchased (or obtained by using the digital code purchased) will be concurrently available for use within and outside this state (not for personal use).

(iii) The buyer must provide the seller with a valid exemption certificate acceptable to the department claiming multiple points of use (MPU). Buyers may use the department's "Digital Products and Remote Access Software Exemption Certificate" to claim this exemption.

(b) **Concurrently available.** "Concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital product simultaneously from one or more locations within this state and one or more locations outside this state.

**Example 32.** Company sells an on-line patent searching service (digital automated service) to Iniesta Corp for use at Iniesta's headquarters in Washington and its R&D facility in California. Iniesta receives the right for five employees (users) in Washington and five employees (users) in California to use the digital automated service, which may be accessed and used simultaneously by these ten employees. In this case, the digital automated service is concurrently available for use by Iniesta both within Washington and outside Washington, and therefore Iniesta may claim the MPU exemption for its purchase of the digital automated service from Company.

(c) **Apportionment (allocation) of use tax.** For purposes of this subsection on multiple points of use, "allocation" and "apportionment" will have the same meaning. A business or other organization subject to use tax on digital products or digital codes that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. Additionally, the department may authorize or require an alternative method of allocation supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer. For example, in the case of Iniesta in Example 32 above, Iniesta would allocate one-half of the purchase price to Washington because five of its ten users are in Washington (e.g.,  $5/10 = 50\%$ ). Thus Iniesta would pay use tax to Washington based on fifty percent of the value of the digital automated service.

(i) **Records requirement.** No allocation under this section is allowed unless the allocation method is supported by the taxpayer's records kept in the ordinary course of business.

(ii) **"User"** means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital product purchased in the performance of his or her duties as an employee or other agent of the taxpayer.

(d) **Application to digital codes.** A digital code is concurrently available for use within and outside this state if users may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(e) **Reporting.** A buyer claiming an exemption under this section must report and pay state and local use tax directly to the department. As explained above in subsection (c), use tax may be reported and paid on an apportioned basis if supported by the buyer's records.

(507) **Machinery and equipment.** Generally retail sales and use tax does not apply to sales to or use by a manufacturer or processor for hire of certain machinery and equipment used directly in a manufacturing or research and development operation. This exemption is commonly referred to as the M&E exemption. (See RCW 82.08.02565 and 82.12.02565 and WAC 458-20-13601 for detailed information regarding the M&E exemption.) Included within the definition of "machinery and equipment" for purposes of the M&E exemption are digital goods. Accordingly, digital goods acquired by manufacturers and processors for hire and used directly in a manufacturing or research and development operation are exempt from retail sales and use tax, provided all of the requirements for the M&E exemption are met.

(508) **Audio or video programming.** Income received from the sale of regular audio or video programming by a radio or television broadcaster is generally subject to service and other B&O tax and therefore not subject to retail sales tax. However, the sale of audio or video programming sold on a pay per program or subscription on-demand basis is generally subject to retail sales and use tax except as provided in section (d) and (e) below.

(a) **"Radio and television broadcasters"** include satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

(b) **"Pay per program or subscription on-demand basis"** means programming that the buyer pays for on a per program basis or a service that allows the buyer to access a library of programs at any time for a specific charge.

(c) **"Regular programming"** is scheduled programming. The person watching cannot stop, pause, rewind, or otherwise control the broadcast of the scheduled programming, including the time that the scheduled program is broadcast.

(i) The fact that a customer uses a recording device, such as a VCR or DVR, does not result in the broadcaster's programming being characterized as a digital good.

(d) **Cable television providers paying franchise fees.** Cable television providers' sales of programming to consumers on a pay-per-program or subscription on-demand basis are not subject to retail sales and use tax if the cable television provider is subject to a franchise fee (under the authority of Title 47 U.S.C. Sec. 542(a)) on the gross revenue received from such sales. If the cable television provider is not subject

to a franchise fee on the income from the sale of programming on a pay-per-program or subscription on-demand basis, then the exemption does not apply and the cable television provider must collect and remit retail sales tax on the retail sale of such programming.

**Example 33.** XYZ sells video programming to customers using cable technology. XYZ does not pay a franchise fee. Customers of XYZ are charged a monthly subscription fee to receive video programming. Customers are charged additional fees to view selected movies. XYZ must charge and collect retail sales tax on the additional fees charged to view the selected movies, but not on the monthly subscription fee.

(e) Satellite television providers do not generally pay franchise fees and therefore do not qualify for the retail sales and use tax exemption based on payment of franchise fees as described in subsection (d) above.

(509) **Newspapers.** Generally, retail sales and use tax does not apply to sales of newspapers transferred electronically, provided that the electronic version has a printed counterpart, and the electronic version:

(a) Shares content with the printed newspaper; and

(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(c) "Printed newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper.

(510) **Received for free by end user.** Digital products and digital codes obtained by the end user for free are not subject to use tax.

(a) For example, a person's use of a free search engine is not subject to use tax.

(b) For example, a person reading an on-line article or viewing an on-line picture for free is not subject to use tax.

(511) **Other use tax exemptions.** Use tax does not apply to the use of digital goods that are:

(a) Noncommercial in nature, such as personal e-mail communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

**Example 34.** Gary, an employee of Kadabbera Corp, creates a digital audio-visual presentation using presentation authoring software and his innate creative capacity. Gary distributes the presentation internally to various divisions within Kadabbera in order to train employees on changes to company tax policies. Gary has created and distributed an item that meets the definition of "digital good." However, the distribution and use of this digital good is not subject to use tax as long as it is used solely "internally" or "solely for the business needs" of Kadabbera.

## Part 6. Miscellaneous Provisions

(601) **"Retail services" (not including digital products), which may also be transferred electronically.**

Washington imposes retail sales and use tax on certain enumerated services under RCW 82.04.050 ("retail services"). For example, the sale of credit bureau services is subject to retail sales tax. However, when a retail service (other than a digital product) is transferred electronically and also meets the definition of digital automated service or digital good, such services will be treated as digital products and are eligible for all applicable digital products retail sales and use tax exemptions as described above in Part V of this rule. Retail services that are not transferred electronically or those retail services that are excluded from the definitions of digital good or digital automated service (e.g., telecommunications services and ancillary services) continue to be taxed as nondigital product retail services.

(a) **Example 35.** Company creates a "canned" digital report on Company Q's creditworthiness prepared prior to a customer request for the report. The "canned" report is listed for sale on Company's web site. An employee of InvestCo, Inc. purchases and downloads a digital copy of the "canned" credit report from Company's web site for InvestCo's business purpose. Company is selling a digital good generally subject to retail sales tax. However, the report is purchased by InvestCo solely for a business purpose and transferred electronically and is therefore exempt from retail sales tax.

(b) **Example 36.** Company sells credit reports and credit research services delivered in a digital format. EPD Corp requests that Company prepare a credit report for EPD's specialized business purposes. After receiving the request, Company's employee researches and aggregates information from various digital sources to prepare the credit report for EPD. Company then sends the report electronically as a digital file to EPD. Company is not selling a digital good or a digital automated service because the digital item supplied to EPD is merely a representation of a professional service or primarily human effort performed by EPD's employee. Therefore, EPD's services are not a "digital product." However, EPD is still required to charge and collect retail sales tax because EPD is still providing credit bureau services, a retail service, subject to retail sales tax.

(c) **Example 37.** Company sells an on-line credit reporting service. The service includes access to searchable data bases, digital data analysis, and digital data reporting tools. ManageCo investigates the credit worthiness of individuals and therefore purchases access to Company's on-line service. Company is selling a digital automated service to be used solely for a business purpose by ManageCo. However, the "used solely for a business purpose" exemption is limited to digital goods and is not applicable to digital automated services. As such, Company is required to charge and collect retail sales tax on its sale of the on-line credit reporting services to ManageCo.

(602) **Royalties and wholesaling B&O tax on digital products.** The sale of digital products to "non-end users" may be subject to royalties or wholesaling B&O tax depending on the type of transaction and the intangible rights provided to the purchaser. Transactions which provide the right to resell individual digital files (no copying rights) to consumers will generally be treated as wholesale sales. Additionally, transactions which allow the purchaser the right to incorporate a digital product into a new product for sale will

also be treated as wholesale sales. All other non-end user transactions involving digital products or digital codes will generally be treated as royalties transactions.

(a) **Example 38.** Media Corp licenses to Rerun, Inc., the right to further broadcast a digital movie file on Rerun's web site for a specified period of time. In this case Media Corp has provided Rerun with the right to further broadcast or exhibit a digital movie. This is a non-end user transaction subject to royalties B&O tax. Media Corp would report its gross receipts from this transaction under the royalties B&O tax classification and not charge and collect retail sales tax on the transaction with Rerun.

(b) **Example 39.** Same facts as Example 38 except Rerun purchases individual digital movie files from ABC with the right to resell those individual files to end users at retail instead of rebroadcasting or exhibiting to the public. In this case Company has provided Rerun with the right to resell individual digital movie files to end users. Company would report its gross receipts from this transaction under the wholesaling B&O tax classification.

(c) **Example 40.** Same facts as Example 39 except that Rerun purchases a single digital movie file with the right to duplicate and sell that movie file. In this case Company has provided Rerun with the right to duplicate and sell individual digital movie files. Company would report its gross receipts from this transaction under the royalties B&O tax classification. Company would not need to charge and collect retail sales or use tax from Rerun.

(d) **Example 41.** LMR licenses to Neagle the right to incorporate a single digital song file into Neagle's on-line game which is sold at retail to individuals. In this respect the song has been used as a component of a new product for sale and thus LMR would report its receipts under the wholesaling classification. ABC would not need to charge retail sales tax to Neagle provided Neagle supplies a properly completed exemption certificate.

(603) **Substantial nexus** is not established in Washington if a business's only contact with the state of Washington is ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; a digital goods or digital codes residing on servers in Washington. For purposes of this section, "substantial nexus" means the requisite connection that a person must have with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution.

(604) **Amnesty.** Before July 26, 2009, retail sales of downloaded digital goods on a permanent or nonpermanent basis were subject to retail sales tax. This did not include accessed or streamed digital goods. However, amnesty is available to those who did not collect or pay retail sales or use tax on digital goods and digital codes during that time. Sales of digital automated services and accessed or streamed digital goods were subject to service and other B&O tax before July 26, 2009, and amnesty does not extend to these transactions because they were not subject to retail sales tax during that time period.

(a) **Refunds and credits of retail sales or use tax.** No refund or credit will be given for state and local retail sales

and use taxes properly paid on the sale or use, before July 26, 2009, of digital goods or of installing, repairing, altering, or improving digital goods.

(b) **No B&O tax refund or credit unless sales tax was paid.** If a taxpayer paid B&O tax under the service and other activities classification prior to July 26, 2009, on income received from retail sales of digital products or digital codes, the taxpayer may not receive a refund or credit for the difference between the B&O tax actually paid and the B&O tax that should have been paid under the retailing classification unless the taxpayer has remitted the retail sales tax for those sales.

(605) **Bundled transactions.** A "bundled transaction" is the retail sale of two or more products, which are distinct and identifiable for one nonitemized price. Because retail sales of digital products and digital codes are subject to retail sales tax, the general rules on the taxation of bundled transactions may apply to transactions involving digital products and digital codes. See RCW 82.08.190 and 82.08.195 for more information on the tax treatment of bundled transactions.

(606) **Property tax.** The excise tax laws relating to digital products and digital codes do not have any impact in the characterization of digital goods and digital codes as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing Title 84 RCW. See section 1201, chapter 535, Laws of 2009.